

# THE HUMAN SECURITY ACT OF 2007 OF THE PHILIPPINES

Assessing the Law's Compliance with International Human Rights  
while Countering Terrorism



University of Oslo  
Faculty of Law

Candidate name: Joanna Marie C. Caraig

Supervisor: Synnøve Ugelvik

Deadline for submission: 18 May 2010

Number of words: 19,760

09.05.2010

# Content

<b><u>1.</u></b>	<b><u>INTRODUCTION</u></b>	<b><u>1</u></b>
<b><u>2.</u></b>	<b><u>WHAT IS TERRORISM?</u></b>	<b><u>3</u></b>
<b>2.1.</b>	<b>History of Global Terrorism</b>	<b>3</b>
2.1.1.	Religious Terrorism	3
2.1.2.	State Sponsored Terrorism	4
2.1.3.	Terrorism and Anarchy	4
2.1.4.	Terrorism and Nationalism	5
2.1.5.	After World War II	6
<b>2.2.</b>	<b>The need for counter measures against terrorism</b>	<b>6</b>
<b><u>3.</u></b>	<b><u>MAKING THE LINK BETWEEN COUNTER TERRORISM MEASURES AND HUMAN RIGHTS</u></b>	<b><u>8</u></b>
<b>3.1.</b>	<b>Freedom from terrorism</b>	<b>8</b>
<b>3.2.</b>	<b>Balance between human rights and counter terrorism</b>	<b>10</b>
<b>3.3.</b>	<b>Derogations</b>	<b>11</b>
<b><u>4.</u></b>	<b><u>HUMAN RIGHTS IN THE FORMULATION OF ANTI-TERRORISM LAWS</u></b>	<b><u>14</u></b>
<b>4.1.</b>	<b>International Measures for Combating Terrorism</b>	<b>14</b>
4.1.1	International Conventions	16
4.1.2	International Declarations and Resolutions	21
<b>4.2.</b>	<b>Regional Measures for Countering Terrorism</b>	<b>23</b>
<b>4.3.</b>	<b>Observed Trends</b>	<b>24</b>

<b><u>5. THE HUMAN SECURITY ACT OF 2007 OF THE REPUBLIC OF THE PHILIPPINES</u></b>	<b>26</b>
<b>5.1. Domestic and International Events leading the way for the legislation of the Human Security Act</b>	<b>26</b>
5.1.1. Muslim Insurgency	27
5.1.2. Efforts to Combat Terrorism	31
<b>5.2. Criticisms against the Human Security Act</b>	<b>37</b>
<b><u>6. IS THE HUMAN SECURITY ACT IN LINE WITH INTERNATIONAL STANDARDS?</u></b>	<b>39</b>
<b>6.1. Fulfilling Human Rights Obligations while Countering Terrorism</b>	<b>39</b>
6.1.1. Is the HSA necessary?	40
6.1.2. Is the HSA complying with international human rights law?	41
6.1.3. Proportionality of the Measures embodied in the HSA	46
<b>6.2. Answering the Criticisms against the HSA</b>	<b>49</b>
6.2.1. The Definition of Terrorist Acts under the HSA	50
6.2.2. The Possibility of Abuse through the HSA	52
6.2.3. The Concern of using the HSA to brand Opposition Members as Terrorists	53
<b>6.3. Are there other criticisms of the HSA?</b>	<b>55</b>
<b><u>7. CONCLUSION</u></b>	<b>56</b>
<b><u>REFERENCES</u></b>	<b>59</b>
<b>Laws</b>	<b>64</b>
<b>Conventions, Resolutions and General Comments</b>	<b>64</b>
<b>Cases</b>	<b>66</b>
<b><u>ANNEX I: REPUBLIC ACT NO. 9372: THE HUMAN SECURITY ACT OF 2007</u></b>	<b>A</b>



## **1. Introduction**

Globally, several states have encountered terrorist activities within their territory. From hijackings, bombings and to kidnappings, states have tried resolving existing problems related to terrorism. It developed into events that leaders and states have not turned a blind eye on. It is perceived as a threat to the life and security of people all over the world. States have engaged in different measures to address terrorism. Most of these measures include international conventions and domestic legislation of anti-terrorist laws. And after the 11 September event in the United States, there has been an intensification of measures against terrorism both at the level of states and international organizations.<sup>1</sup> New laws and resolutions have been passed in order to strengthen national and international action against terrorism.<sup>2</sup>

The Philippines have also been faced with similar terrorist activities within its territory. These terrorist activities are usually linked to domestic secessionist and insurgent groups. It has been going on for decades. The Philippine government didn't turn a blind eye on the events of bombings and kidnappings that occurs within the country. It has engaged in different approaches of resolving conflicts: peace talks, peace keeping operations and the improvement of both the military and the police in order to strengthen domestic security. It has also engaged in regional cooperation with both neighboring countries and the United States.<sup>3</sup>

The most recent policy that the Philippine Government came up with is the Human Security Act of 2007 (HSA). It aims to “protect life, liberty, and property from acts of terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the law of nations.”<sup>4</sup> However, the HSA did not go

---

<sup>1</sup> Wolfgang (2004) pg. 3

<sup>2</sup> Ibid pg. 3

<sup>3</sup> Chareudin (2003) pg. 44

<sup>4</sup> HSA of 2007 section 2

by without any criticisms. And like most counter terrorism measures that are said to violate international human rights conventions, it has been criticized to violate certain human rights standards.

In this paper, the researcher shall determine if the HSA is in accordance with existing international standards for countering terrorism this paper aims to examine the content of the law and its other implications on society. In order to do this, the researcher shall (a) look into the background of international terrorism and show counter terrorism efforts became imperative for states; (b) identify the different existing international and regional conventions for enacting a counter terrorism law and see what are the principles or major trends that connect human rights with counter terrorism; (c) discuss the background of terrorism in the Philippines; and (c) analyze if the HSA is in accordance with international law standards for counter terrorism measures and if it a tool to address the ongoing terrorist threats in the Philippines.

To proceed with the discussion, the researcher has first looked into numerous books, articles and online resources regarding terrorism and human rights. This allowed the researcher to give a background and the cause of recent international and domestic events. Moreover, the researcher looked into the 12 international conventions<sup>5</sup> that are related to terrorism and choose the ones relevant to the research, particularly those that mention the rights of suspected terrorists. The researcher also read some materials on how regional and other states' responses to terrorism integrate the protection of human rights in the legislation. And of course, the important part of the HSA was also dissected, including the domestic events that led to the legislation of the law.

---

<sup>5</sup> 1963 Tokyo Convention, 1970 Hague Convention, 1971 Montreal Convention, 1973 Protected Persons Convention, 1979 Hostages Convention, 1980 Vienna Convention, 1988 Rome Convention, 1991 Montreal Convention, 1994 UN Personnel Convention, 1997 Terrorist Bombings Convention, 1999 Terrorist Financing Convention, 2005 Nuclear Terrorism Convention

## **2. What is terrorism?**

To what extent can we categorize an act as an act of terrorism? Numerous questions can be asked by scholars, lawmakers or simple citizens. This section shall discuss how terrorism came to life and became a recognized crime. It shall also discuss how states and the international community in general responded to acts regarded as or connected to terrorism.

### **2.1. History of Global Terrorism**

Terrorism does not only include activities on and after 11 September. War crimes, crimes against humanity, and what we call terrorism have occurred since antiquity.<sup>6</sup> Violence and counter actions against violence have happened in the old ages, usually prompted by reactions by the oppressed. From revolutionaries, religious warriors, separatist movements fighting for autonomy, terrorism has been ongoing for centuries.

#### **2.1.1. Religious Terrorism**

Using religion as the reason to use violence was one of the first manifestation of instilling terror in another group. The early terrorist organizations are the Zealots and the Assassins.<sup>7</sup> The Zealots' cause of struggle was mainly religious and political due to the repression caused by the Romans on the Jews.<sup>8</sup>

The Assassins was Muslim of character,<sup>9</sup> also fueled with religious mission and political ambitions, co-opted the use of terror to psychological ends and targeted a foreign, Christian power: the Crusaders.<sup>10</sup> Terrorism founded on religious motives still continued until 1605, when the Gunpowder Plot incident took place in Great Britain. Guy Fawkes and his conspirators wanted to instigate a counterreformation and install the Roman pope as

---

<sup>6</sup> Blakesley (2006) pg. 13

<sup>7</sup> Chaliand and Blin (2007) pg. 59

<sup>8</sup> Ibid pg. 56

<sup>9</sup> Ibid pg. 59

<sup>10</sup> Chaliand and Blin in Chaliand and Blin (2007) pg. 59

head of England.<sup>11</sup> He, a member of this religiously inspired terrorist group, was caught red handed trying to blow up London's Palace of Westminster.<sup>12</sup>

### 2.1.2. State Sponsored Terrorism

Following the Gunpowder Plot in 1605 was the "Reign of Terror," which took place during the French Revolution. Revolutionaries gained control of the government and King Louis XVI was tried and executed by the revolutionary court, under the leadership of Maximilien Robespierre. Robespierre portrayed terrorism as the solution to internal anarchy and invasion by other European monarchs. People were expelled from the country, imprisoned, and executed even when there was lack of evidence.<sup>13</sup> This episode in France gave birth to the concept of state-sponsored terrorism or state terrorism.<sup>14</sup>

### 2.1.3. Terrorism and Anarchy

Terrorism also came to refer to non-State practices.<sup>15</sup> Events of terrorism were stimulated by political ideals such as anarchy and nationalism.

In the 19<sup>th</sup> century, there were changes in the economic system of most European countries.<sup>16</sup> This led to the emergence of the bourgeoisie and the proletariat. The proletariat's condition was miserable making them resent the capitalist system. All these social transformations laid the groundwork for the formulation of revolutionary doctrines.<sup>17</sup> One of the early anarchist theorists, Michael Bakunin, published a manifesto in 1848 calling on the Russian people to revolt against the tsar and attack state officials.<sup>18</sup> Narodnaya Volya, a terrorist group, was credited as being the first group to put into

---

<sup>11</sup> Griset and Mahan (2003) pg. 3

<sup>12</sup> Ibid pg. 2

<sup>13</sup> Ibid pg. 4

<sup>14</sup> Chaliand and Blin (2007) pg. 95

<sup>15</sup> Ibid pg. 2

<sup>16</sup> Hubac-Occhipinti in Chaliand and Blin (2007) pg. 114

<sup>17</sup> Ibid pg. 115

<sup>18</sup> Vetter and Perlstein (1991) in Griset and Mahan (2003) pg. 7



practice Pisacane's "propaganda by deed."<sup>19</sup> The Narodnaya Volya assassinated prominent officials in the tsar's government, including police chiefs, government agency heads, members of the royal family and the tsar himself.<sup>20</sup>

Anarchism also sparked in Italy and was considered as terrorists who used "propaganda by deed." Their means of instilling terror, especially to those in government, included violence by individuals and assassination attempts, targeting leaders outside and within Italy. The anarchist movement was very successful in Spain in the nineteenth century, where they resorted to assassinations, expropriation and murder. Also, several American anarchists resorted to "targeted" assassinations or to armed acts of revenge. Anarchist terrorism also took place in France. French anarchist terrorist acts included assassination attempts and the use of the dynamite.<sup>21</sup>

#### 2.1.4. Terrorism and Nationalism

The wave of anarchist terrorism ended in 1914 and terrorism by nationalists begun. This shift from anarchism to nationalism was marked by Serbian nationalist revolutionaries' assassination of the Archduke Franz Ferdinand of Austria and his wife on 28 June 1914. In Bosnia, Serbian nationalists fought for Greater Serbian solidarity by organizing the rebellion against the provisional administration established by Austria.<sup>22</sup> Nationalist terrorists were also present in Ireland and most of the events of violence were associated with the Irish Republican Army (IRA). Fighting for having their own independent state from 1916 to 1923, the rebellion resorted to systematic use of terror and started a merciless war against the British.<sup>23</sup> Isolated instances of terrorism also occurred from the beginning of British rule over India in 1857. In Latin America, terrorism was tied

---

<sup>19</sup> Propaganda by deed means that the terrorist act was the best herald of the need to overthrow the regime and doing it by assassinating symbolic targets (i.e. head of state) and indiscriminate attacks for greater shock value, ensuring massive media coverage. (Merari, Ariel. "Terrorism as a Strategy for Insurgency," in Chaliand, and Blin, (2007). pg. 33

<sup>20</sup> Ibid pg. 7

<sup>21</sup> Hubac-Occhipinti in Chaliand and Blin (2007). pp. 117-130

<sup>22</sup> Chaliand and Blin in Chaliand and Blin (2007) pg. 177

<sup>23</sup> Ibid pg. 184-187

to colonial rule and the desire for self-determination. State-sponsored terrorism and brutal military repression was also widespread.<sup>24</sup>

#### 2.1.5. After World War II

Much post-war 'terrorism' was linked to specific situations of decolonization, and dissipated independence. The magnitude, internationalization, and indiscrimination of modern terrorism set it apart from the targeted assassinations of the nineteenth century.<sup>25</sup> The use of advanced technology and the targeting of the civilian populations made terrorism's impact wider and caught more attention. With the invention of nuclear weapons, and of the hydrogen bomb the psychological dimension of warfare became paramount.<sup>26</sup> By the late twentieth century, new forms of fundamentalist religious terrorism emerged (such as Al Qaeda). At the same time, 'traditional' assassinations continued to be used with devastating effect.<sup>27</sup>

Overall, the cause of terrorist organizations overtime has varied due to changing social climate and economic situations of the countries. Terrorism represents a growing problem and in the face of this exigency, governments have tried to develop policies to thwart terrorism.<sup>28</sup> The insecurity among states has led them to formulate legislations and policies directed towards prevention of and the criminalization of terrorism.

#### 2.2. The need for counter measures against terrorism

Based on earlier campaigns of terrorism, Roberts (2008) came up with ten propositions. These propositions were drawn from the long history of terrorism, and the action against it. Some of it point out on why states chose to retaliate against terrorist actions. Out of ten, six of them point out the reasons for counter terrorism measures. *First,*

---

<sup>24</sup> Griset and Mahan (2003) pp. 8-9

<sup>25</sup> Saul (2006) pg. 2

<sup>26</sup> Chaliand and Blin in Chaliand and Blin (2007) pg. 209

<sup>27</sup> F Megret (2003) in Saul (2006) pp. 2-3

<sup>28</sup> Cauley and Im (1988) pg. 27

is that terrorism has long been seen as a threat to democracies. *Second*, terrorist action often has unintended consequences. These unintended consequences usually have massive effects on the safety of societies. These consequences lead the state itself and the community to retaliate against or condemn the terrorist group for their actions. Moreover, Terrorism has the capacity to become endemic in particular regions, cultures and societies. This brings us to the *third* and another reason why states tend to retaliate to terrorism. As terrorist groups tend to become endemic in societies, terrorism becomes damaging to the societies in which it takes place requiring action from the state itself to protect the societies it affects. *Fourth*, counterterrorist activities and policies can sometimes succeed – at least in the sense of contributing to a reduction or ending of the activities of terrorists. Counter terrorism’s success is not only owed to military action or mutual violent acts. Rather, an underlying need to address grievances of the terrorist group is also essential in order to contain the terrorist threat. *Sixth*, “Respect for the law has been an important element in many operations against terrorists” wherein terrorists are treated as an outlaw.<sup>29</sup>

Moreover, as the concern for terrorism grew among states, it became inevitable that certain state actions led to the fight against and the deterrence of terrorism. As what can be seen in the propositions Roberts (2008), states are mostly bothered by threats to the security of their territory or the effects of terrorism on societies. Alison Brysk (2007) presented a reason on why states react to hostility in a manner such as creating legislations to counter or to stop the causes of violence in their territory. Brysk (2007) said that “all social systems include some rule-governed coercive responses to unauthorized violence.”<sup>30</sup> States usually perceive violence as a threat to the foundation and the main tenets of what their societies stand on. Some states perceive revolutionaries as a threat to democratic regime they live with.<sup>31</sup> And when states’ monopoly of coercion is challenged by domestic or transnational wielders of violence, rather than by competing militaries, some leaders argue and citizens come to believe that conventional defense cannot protect them.<sup>32</sup> When all these

---

<sup>29</sup> Roberts (2008) in Bianchi and Keller (eds.) (2008) pg.14-20

<sup>30</sup> Brysk (2007) pg. 5

<sup>31</sup> Roberts (2008) in Bianchi and Keller (eds.) (2008) pg.13

<sup>32</sup> Brysk (2007) pg. 5

uncertainties brought by violence and impeding violence within a territory sum up together, the state or the society comes up with a whole mechanism of trying to protect itself and its citizens.

### **3. Making the Link between Counter Terrorism Measures and Human Rights**

#### **3.1. Freedom from terrorism**

The necessity to protect the security of its citizens and its territory has been one of the utmost reasons of why states would like to deter terrorism. Not only are states individually concerned about the threats of terrorism. The international community has also expressed concerns. The UN General Assembly Resolution 56/160, entitled Human Rights and Terrorism, recalled the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights and reaffirmed that the international community should take necessary steps and enhance cooperation to prevent and combat terrorism which is perceived acts, methods and practices of terrorism harmful to human rights, fundamental freedoms and democracy and threatens territorial integrity and security of States.<sup>33</sup>

Terrorism is perceived by many to pose a threat to the everyday lives of individuals. In this way, terrorism can be seen as something that could violate the rights of an individual. If terrorism is defined as an act that could put a person's "life and liberty in danger,"<sup>34</sup> threatens "to harm them or imperiling their lives, honor, freedoms, security or rights,"<sup>35</sup> or as a "means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property,"<sup>36</sup> terrorist acts violates Article 6 and 9 of the Covenant on Civil and Political Rights (CCPR), states that "Every human

---

<sup>33</sup> UNGA 56/160 preamble

<sup>34</sup> The Arab Convention on the Suppression of Terrorism article 1(2)

<sup>35</sup> 1999 OIC Convention to Combat Terrorism article 1(2)

<sup>36</sup> SAARC's 1987 Convention article 1(e)

being has the inherent right to life”<sup>37</sup> and “Everyone has the right to liberty and security of person.”<sup>38</sup> In addition, if kidnapping, connected with a terrorist activity or goal, is considered as a terrorist act,<sup>39</sup> it also then violates Article 9(1) of the CCPR stating that “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>40</sup>

Article 9 does not only pertain to detained persons. An interpretation of Article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant (CCPR).<sup>41</sup> This means that the state has an obligation to ensure that a person or its citizens should be free from terrorist threats and the harms that terrorism may inflict on them. In the Inter-American system, it has been reasoned that “the State’s national and international obligation to confront individuals or groups who use violent methods to create terror among the populace, and to investigate, try, and punish those who commit such acts means that it must punish all the guilty [...]”.<sup>42</sup> In the European system, Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that “[e]veryone’s right to life shall be protected by law.” The European Court of Human Rights has interpreted this provision accordingly: “The Court recalls that the first sentence Article 2(1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction [...]. This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational

---

<sup>37</sup> CCPR article 6

<sup>38</sup> Ibid article 9

<sup>39</sup> See 1971 OAS Convention article 1; 1973 Protected Persons Convention article 2; 1979 Hostages Convention article 1

<sup>40</sup> CCPR article 9(1)

<sup>41</sup> Delgado Paez v. Columbia para. 5.5

<sup>42</sup> Asencios Lindo, et. al., Case para. 58

measures to protect an individual or individuals whose life is at risk from the criminal acts of another individual [...].”<sup>43</sup>

If the security of an individual is a human right, according to Article 9(1) of the CCPR, the state now has an obligation to protect it against acts or threats such as terrorism. The foundation of counter terror would be the protection of the individual from both external threats and state violence.<sup>44</sup> Therefore, if there is a broader notion of national security that includes the state’s responsibility to provide security *for its citizens*, [this means that it] implies more rights, not less.<sup>45</sup> In addition, this entails a responsibility among states to be able to safeguard human rights while countering terrorism. Overall, looking deeper into this obligation, states are expected to protect human rights at all times, especially if they are parties to certain international human rights treaties.

### 3.2. Balance between human rights and counter terrorism

Though fighting terrorism is a means of safeguarding certain human rights, there should be a balance between the counter terrorism activities and the damage these could also do to human rights. In the Statement of the Secretary General to the UN Security Council by Kofi Annan in 18 January 2002, he said that “there is no trade-off between effective action against terrorism and the protection of human rights. [...]. While we certainly need vigilance to prevent acts of terrorism, and firmness in condemning and punishing them, it will be self-defeating if we sacrifice other key priorities – such as human rights in the process.”<sup>46</sup> Moreover, the UN Security Council Resolution 1456 para. 6 states that “[s]tates must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt measures in accordance with international law, in particular international human rights, refugee, and humanitarian

---

<sup>43</sup> Kilic v. Turkey, para. 62

<sup>44</sup> Brysk (2007) pg. 9

<sup>45</sup> Wilson (2005) in Brysk (2007) pg. 9

<sup>46</sup> Statement of the Secretary General to the UN Security Council by Kofi Annan in 18 January 2002

law.”<sup>47</sup> If the duty to counter terrorism should be present among states in order to protect fundamental rights, such as the right to life, there should also be an actual balance between the counter terrorism measure and the rights it wishes to limit. It should offer a limit rather than an excluding the right. And if a law wishes to limit rights, there should be corresponding safeguards to it. This means that limitations should be provided for by law. Also by providing measures that may limit rights, the measure should be able to lead to the protection of the very right that the law wishes to protect, i.e. the right to life. The starting point in determining proportionality is that limitations imposed by counter terrorist measures must not impair the essence of the right being limited.<sup>48</sup> There should be a balance between the necessity of the measure for deterring further damage to the right it protects and the rights it seeks to limit. Thus, it is clearly implied that states, though expected to deter terrorism, should keep in mind their responsibility and adhere to their obligations under international human rights law.

### 3.3. Derogations

States may need to derogate from their treaty obligations under some circumstances. Article 4 of the CCPR states that “in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the group of race, color, sex, language, religion or social origin.” In addition, the General comment 29 on States of Emergency (Article 4) listed some other rights that may be considered non-derogable during state of emergencies. It says that “The fact that some of the provisions of the Covenant have been listed in Article 4 (paragraph 2), as not being subject to derogation does not mean that other articles in the Covenant may be subjected to derogations at will

---

<sup>47</sup> UN Security Council Resolution 1456, para.. 6

<sup>48</sup> UN Commission on Human Rights (2002)

[...].”<sup>49</sup> Paragraph 13 of CCPR General Comment 29 states that “there are elements that in Committee’s opinion cannot be made subject to lawful derogation under Article 4.” The list of examples includes (a) that persons deprived of their liberty should be treated with humanity and respect; (b) the prohibition of taking hostages, abductions or unacknowledged detention; (c) the protection of the right of minorities; (d) the prohibition of forced displacement; and (e) that derogations should not be used as a justification for a State to engage in propaganda for war, advocacy of national, racial or religious hatred, hostility or violence.<sup>50</sup>

If states wish to derogate from their obligations, they have to state their reasons for their decision. States may derogate from their obligations under certain conditions. *First*, they may derogate during public emergencies threatening the life of the nation.<sup>51</sup> This is also mentioned in CCPR General Comment 29, para. 3, where it says that derogations are allowed when there is a “threat to the life of the Nation.” While the emergency need not affect the whole population, it does need to be serious enough that the organized life of the community is threatened.<sup>52</sup> *The Greek Case* described the characteristics of a public emergency. A public emergency (1) must be actual or imminent; (2) has effects involved the whole nation; (3) a situation where the continuance of the organized life of the community must be threatened; and (4) is where a crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate.<sup>53</sup> *Second* are the procedural requirements for derogation and supervision.<sup>54</sup> This means that states have to present reasons to derogate from the convention or treaty. They should be able to notify relevant overseeing bodies and other state parties to the convention or treaty. This can be done by, for example, notifying the Secretary-General of the UN and through him other State

---

<sup>49</sup> General Comment 29, para. 6

<sup>50</sup> Ibid, para.13

<sup>51</sup> Duffy (2007). pg. 292

<sup>52</sup> Ibid, pg. 292

<sup>53</sup> The Greek Case

<sup>54</sup> Duffy (2007). pg. 294



parties.<sup>55</sup> In addition to international procedural requirements, intended to ensure appropriate international oversight, the Human Rights Committee has noted the need for domestic judicial oversight of the derogation. *Third* is the acknowledgement of certain “inalienable ‘non-derogable’ rights applicable in all situations.” Though the list of ‘non-derogable’ rights varies from treaty to treaty, the common to all of these provisions are the rights not to be arbitrarily deprived of life, freedom from torture or inhuman or degrading treatment or punishment, freedom from slavery, rights relating to legality and non-retroactivity in criminal matters.<sup>56</sup> These non-derogable rights are stated in the CCPR Article 4(2). There should be no derogation from the following articles: Article 6, the right to life; Article 7, freedom from torture, cruel, inhuman or degrading treatment, or punishment; Article 8, freedom from slavery, Article 11, imprisonment on the grounds of inability to fulfill a contractual obligation; Article 15, prohibition of retroactive penalties; Article 16, recognition before the law, and Article 18, freedom of thought, conscience and religion.<sup>57</sup> *Fourth* is that states are expected to be consistent with their other obligations. This means that any derogation from one human rights treaty should not affect other international obligations, whether treaty or customary. For example, if a state derogates from the ECHR, it remains bound by the ICCPR, unless it similarly derogates from that treaty. *Fifth* is that the measures to be taken by states are “strictly necessary and proportionate.” And finally, there should be no discrimination in applying the derogation as mentioned in the CCPR Article 4(1) stating that the measures should be applied without discrimination on the grounds of “race, color, sex, language, religion or social origin.”<sup>58</sup>

Therefore, in combating terrorism, states should keep in mind that there are certain human rights obligations that need to be fulfilled. They should be vigilant in deciding which methods they will use and which course of actions of actions they would take. Moreover, if there is an obligation among states to still adhere to their human rights obligations under international conventions and treaties, states should also be careful in the

---

<sup>55</sup> CCPR, art. 4(3)

<sup>56</sup> Duffy (2007). pg. 294-295

<sup>57</sup> CCPR, article 4(2)

<sup>58</sup> Duffy (2007). pg. 295-297

legislation of anti-terrorism laws. These anti-terrorism laws should be seen as an instrument that is free from provisions that could violate certain human rights conventions or treaties. Human rights being applicable to everyone, counter or anti-terrorism laws, international or domestic, should still have an element of protecting, not only those affected by terrorism, but also, those people who are suspected of committing terrorist acts.

#### **4. Human Rights in the formulation of anti-terrorism laws**

With an ongoing trend of legislating anti-terrorism measures and policies, even the United Nations and international organizations have drafted several anti-terrorism conventions, before and after the September 11 incident in the United States. In this section we shall look into the basis of the legislation of the existing anti-terrorism conventions and look into the standards for formulating a domestic counter terrorism law. From the pool of 12 conventions related to terrorism, this part shall point out several conventions and the essential elements in the legislation of a counter terrorism law, i.e. the kind of terrorist activity it addresses. It will also determine what a counter terrorism measure should address. And this part shall also see how the human rights elements can be an essential ingredient in formulating counter terrorism legislations. The human rights elements we will be looking at are the rights of the victims and the rights of the offender.<sup>59</sup> This way, we would be able to see which rights are highlighted in counter terrorism conventions, laws and treaties and if ever they put emphasis on the protection of human rights. Also, by looking at the measures, we shall try to trace a pattern of balancing between the counter terrorism measures that may impede certain human rights and the rights it wishes to protect.

##### **4.1. International Measures for Combating Terrorism**

In order to criminalize acts of terrorism, the concept of terrorism needs to be defined clearly within international and domestic law. A vague definition of terrorism would allow states to prosecute terrorists without protection from violations against their

---

<sup>59</sup> Offender will refer to both to the offender and alleged offender

rights.<sup>60</sup> Regarding every inhumane crime as terrorism would make the concept over inclusive. Every criminal act might be regarded as a terrorist act. Deficient or hastily written definitions would be equally hazardous to convicted terrorists or those implementing counter terrorism measures. Therefore, it is mandatory that a definition is put in place before actually deterring or combating terrorism.

However, defining terrorism has been challenging both law makers and scholars.<sup>61</sup> Various diplomatic attempts to draft a global terrorism convention have failed as consensus around a single definition of international terrorism has proved elusive.<sup>62</sup> Though difficulties have been encountered, developments can be seen in attempting to define what terrorism is. Definitions from international to regional conventions can be considered as a starting place to provide a picture of what we can refer to as terrorism.

Until the 1930s, efforts to achieve a consensus of the definition of terrorism were still underway.<sup>63</sup> The 1937 Convention for the Prevention and Punishment of Terrorism defines terrorism as '[a]ll criminal acts directed against a State and intended or calculated to create state of terror in the minds of particular persons or a group of persons or the general public'.<sup>64</sup> Though never came into force, the Convention on the Prevention and Punishment of Terrorism influenced other treaties and rules to define and combat terrorism.<sup>65</sup> Despite never entering into force, the League Convention remains important for the range and detail of legal issues it covered, many of which resurfaced in ongoing UN debates about definition in the 1970s and 2000s.<sup>66</sup> In the early seventies, the United Nations mandated an *ad hoc* committee of the General Assembly to consider a Draft Comprehensive Convention and produce a definition.<sup>67</sup> However, this endeavor did not reach its objective, but rather, it came up with highlights of what are the problems of

---

<sup>60</sup> Blakesley (2006). pg. 23

<sup>61</sup> Ibid, pg. 24

<sup>62</sup> Ibid, pg. 17

<sup>63</sup> Duffy (2007) pg. 18

<sup>64</sup> Convention for the Prevention and Punishment of Terrorism (1937) in Duffy (2007) pp. 17-18

<sup>65</sup> Blakesley (2006) pg. 31

<sup>66</sup> Saul (2006) in Blakesley (2006) pg. 31

<sup>67</sup> Dudgard (2003) in Duffy (2007) pg. 18-19

coming up with a definition. In 1994, the UN General Assembly endorsed a non binding Declaration on Measures to eliminate International Terrorism.<sup>68</sup> It defined terrorism as “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes.”<sup>69</sup> Developments in defining terrorism still continued. And since 1996, the *ad hoc* Committee has continued to debate a generally accepted definition of terrorism for the purposes of a comprehensive anti-terrorism convention until this day.<sup>70</sup> And after the 9/11 attack, states reiterated the urgency of adopting a comprehensive convention on international terrorism.<sup>71</sup> Today, there are several conventions that give some kind of definition to terrorism. Unlike the international treaties, a number of treaties concluded by member States of regional or other organizations define specifically ‘terrorist’ offences.<sup>72</sup> Generic definitions of terrorism promulgated by regional organizations generally apply only to the member States of those organizations.<sup>73</sup> Though this is the case, it does not mean that regional treaties have no use or significance for the search of a concrete definition of terrorism. The definitions of terrorism in regional treaties contribute to the normative debates about definition in international law, supplying concrete examples of definitions which might be accepted, modified, or contested on the international plane and which influence state practice.<sup>74</sup>

#### 4.1.1 International Conventions

Before 9/11 occurred, there were several conventions regarding terrorism. Most of the instruments have focused “on the prevention and suppression of specific acts which everybody understood to be terrorist acts – namely hijacking of planes and other criminal acts against civil aviation, hostage-taking, acts of violence against internationally protected persons, offences against the safety of maritime navigation, offences involving the use of

---

<sup>68</sup> Duffy (2007) pg. 19

<sup>69</sup> General Assembly Resolution on Measures to eliminate international terrorism (1994) article 1 (3)

<sup>70</sup> Duffy (2007) pg. 20

<sup>71</sup> Report of the Working Group of the Sixth Committee on ‘measures to eliminate international terrorism’ (29 October 2001) in Duffy (2007) pg. 23

<sup>72</sup> Saul (2006) pg. 142

<sup>73</sup> Duffy (2007) pg. 27

<sup>74</sup> Saul (2006) pg. 144

nuclear material, bombings and financing of terrorism.”<sup>75</sup> There are three early conventions addressing terrorist activities. One of the earliest is the 1963 Tokyo Convention. This convention specifically addresses activities that “may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board.”<sup>76</sup> The 1970 Hague Convention addresses matters of hijacking or seizing control of an aircraft through intimidation or force.<sup>77</sup> The third is the 1971 Montreal Convention, which pertains to any activity that may endanger the safety of an aircraft and its passengers on board.<sup>78</sup> The common factor to these three conventions is the addressing of terrorist activities on board an aircraft. They have no element of addressing the human rights of either the terrorists or the victims.<sup>79</sup> Though the conventions did not mention anything about the particular non-derogable rights listed in Article 4(2), they pointed out the protection of the safety of the passengers and crew members on board, and thus, protecting the right to life of the CCPR Article 6(1). Moreover, they point out factors that relate to Article 14 of CCPR, the right to fair trial. In Article 13(3) of the 1963 Tokyo Convention, Article 6(3) of the 1970 Hague Convention and Article 6(3) of the 1971 Montreal Convention, it states that “[a]ny person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.” This kind of provision allows an offender to consult a counsel. This also follows from Article 14(3)(b) of the CCPR that states that in determining any criminal charges against an offender, he or she shall be entitled to the a minimum guarantee “to communicate with the counsel of his own choosing,” However, this does not mean that the three conventions mentioned are directly trying to protect the human rights.

---

<sup>75</sup> Bourloyannis-Vrailas (2004) pg. 14

<sup>76</sup> 1963 Tokyo Convention article 1

<sup>77</sup> 1970 Hague Convention article 1

<sup>78</sup> 1971 Montreal Convention article 1

<sup>79</sup> Bourloyannis-Vrailas (2004) pg. 14

One of the early anti terrorist conventions that was first negotiated with the United Nations is the 1973 Protected Persons Convention.<sup>80</sup> Though directed towards the protection of a specific group of people, the 1973 Protected Persons Convention points out the protection of the right to liberty, a right pointed out in CCPR Article 9(1). It prohibits the intentional commission of “murder, kidnapping or other attack upon the person or liberty of an internationally protected person”<sup>81</sup> and violent attacks “upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty.”<sup>82</sup> Moreover, this convention, compared to the three conventions already discussed mentions certain rights entitled to an offender. Article 9 states that an offender is to “be guaranteed fair treatment at all stages of the proceedings”<sup>83</sup> connected to the crime he committed. This part of the convention clearly points that offenders are given rights in all stages of the proceedings, which may include the nature of his trial and the treatment he might be subjected to during trial and detention.

In 1979, a convention prohibiting hostage taking was adopted. The 1979 Hostages Convention prohibits an act consisting of the detention and threatening to kill, injure or prolong the detention of another person.<sup>84</sup> This convention protects the liberty of a person, a right that is non derogable under Article 4(3) of the CCPR. In addition, it also mentioned the rights of the offender to be granted an appropriate representative and to be visited by this representative.<sup>85</sup> Though it is not one of the non-derogable rights, this right given to the offender is still a right provided for in CCPR, Article 14(3). Therefore, even during a situation where a terrorist act has taken place, there is no reason to violate any rights even if it was those of the offender.

---

<sup>80</sup> Ibid pg. 15

<sup>81</sup> 1973 Protected Persons Convention article 2(1)(a)

<sup>82</sup> Ibid article 2(1)(b)

<sup>83</sup> Ibid article 9

<sup>84</sup> 1979 Hostages Convention article 1(1)

<sup>85</sup> Ibid article 6(3)

In the 1980s, two terrorism conventions were adopted: the 1980 Vienna Convention and the 1988 Rome Convention. The 1980 Vienna Convention prohibits the protection or the use of nuclear weapons as stated in Article 7. Similar to the 1973 Protected Persons Convention, it has a provision that states that the offender should be given fair treatment at all stages of the proceedings.<sup>86</sup> However, similar to what was mentioned earlier, though it mentions that the offender has rights, it is still too broad to assume that it will give way to the protection of the offender's human rights. This could be referring to any proceedings. IT does not specify if it is the proceedings of the trial or the proceedings during detention. On this account, states can go around this provision and may endanger an offender's rights. Its broadness could serve as a poor example for domestic counter terrorism laws. The 1988 Rome Convention on the other hand prohibits unlawful acts of violence or threat of violence on board a maritime vessel.<sup>87</sup> In Article 7(3) of the 1988 Rome Convention, it states that the offender should be entitled to a representative that comes from the state of his or her nationality. Similar to the 1979 Hostage Convention, this right given to the offender is one of the rights listed under the CCPR.

Two conventions on anti-terrorism were formulated in the early 90s. The first is the 1991 Plastic Explosives Convention that prohibits the manufacturing of unmarked plastics explosives,<sup>88</sup> and requests the states for effective measures and regulations on the transportation and possession of such explosives.<sup>89</sup> This convention does not have a provision protecting the offender. Further, the 1994 UN Personnel Convention protects UN personnel from murder, kidnapping and threats to their liberty and security.<sup>90</sup> It can be concluded that it protects the right to liberty and security of a person as set out in CCPR, Article 9(1), one of the non-derogable rights. This Convention gives more rights to the offender. Article 17 entitles: (1) fair treatment at all stages of the process and (2) the right

---

<sup>86</sup> 1980 Vienna Convention article 12

<sup>87</sup> 1988 Rome Convention article 3

<sup>88</sup> 1991 Montreal Convention article 3

<sup>89</sup> Ibid article 4

<sup>90</sup> 1994 UN Personnel Convention article 9

to a representative. Thus, this convention recognizes the rights stated, not only in CCPR Article 14(1) and Article 14(3)(b).

In the late 90s, the international community established two other conventions for combating terrorism. These are the 1997 Terrorist Bombing Convention (TBC) and the 1999 Financing of Terrorism Convention (FoTC). The first criminalizes acts of intentionally delivering, placing, discharging or detonating an explosive or other lethal device in a public place, government facility, public transportation system, with the intent to cause death or serious injury or to cause extensive destruction of such a place, facility or system.<sup>91</sup> The FoTC prohibits collecting to be used to carry out an act that constitutes an offense<sup>92</sup> that is regarded as terrorism. The acts prohibited by the two conventions are those endangering the right to life of the people it may affect. The conventions have also strengthened the protection of the rights of alleged terrorists. Both considered the applicable provisions of international law, including international law of human rights.<sup>93</sup> Compared to their predecessors, the two later conventions exhibited a more direct reference to the rights of terrorists. The TBC exhibits an element of protecting civil and political rights. Article 7(3) of the convention recognizes that the person who is accused of committing the terrorist act do have rights. It states that the person who committed an offender should be given an appropriate representative, which is entitled to protect that person's rights, and should be informed of his or her rights stated in the convention.<sup>94</sup> The offender is also entitled to a representative, a right that is mentioned in CCPR, Article 14(3)(b). The FoTC also exhibits elements of the civil and political right. In Article 9, similar to Article 7(1) of the TBC, the person who has committed the offence shall be given an appropriate representative.<sup>95</sup> Moreover, parallel to TBC, Article 7(3), it said that the person who has committed or is alleged of committing the offence should be informed of

---

<sup>91</sup> 1997 Terrorist Bombing Convention, article 2(1)

<sup>92</sup> Center for Nonproliferation Studies(2009) pg. 1

<sup>93</sup> Bourloyannis-Vrailas (2004) pg. 15

<sup>94</sup> Ibid, Article 7(1)

<sup>95</sup> 1999 Terrorist Financing Convention Article 9(3)(a)



his rights under that article.<sup>96</sup> Unlike the 1997 Terrorist Bombing Convention, this convention also states in Article 21 that it shall not affect “other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.”<sup>97</sup> This means that the FoTC recognizes the other standing international human rights conventions and treaties and, thereto, the rights mentioned by it.

#### 4.1.2 International Declarations and Resolutions

There are also declarations made by the UN that are related to terrorism. Some of these are the 1994 Declaration on Measures to Eliminate International Terrorism and the 1996 Supplementary Declaration thereto. The 1994 Declaration expresses that states reaffirm their “condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States.”<sup>98</sup> Its human rights element can be seen in paragraph 5 which states that “States must also fulfill their obligations under the Charter of the United Nations and other provisions of international law with respect to combating international terrorism and are urged to take effective and resolute measures in accordance with the relevant provisions of international law and international standards of human rights for the speedy and final elimination of international terrorism.”<sup>99</sup> Here it is clear that states should still adhere to international human rights standards in their fight against terrorism.

The UN General Assembly came up with a resolution on 18 December 2002 for the protection of human rights and fundamental freedoms while countering terrorism. Paragraph 1 of the resolution states that “[s]tates must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular

---

<sup>96</sup> Ibid article 9(3)(c)

<sup>97</sup> Ibid article 21

<sup>98</sup> UN General Assembly Res. 49/60 para. 1

<sup>99</sup> Ibid para. 5

international human rights, refugee and humanitarian law.”<sup>100</sup> Moreover, it mentions that states, while countering terrorism, should “take into account relevant United Nations resolutions and decisions on human rights, and encourages them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations human rights treaty bodies.”<sup>101</sup> The Commission on Human Rights came up with a similar resolution regarding protection of human rights and fundamental in this context. This resolution tackles counter terrorism during times of emergency and the obligation of states regarding derogations. Third paragraph contains the human right element mentioning that “[s]tates must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.”<sup>102</sup>

In addition, the United Nations Security Council (UNSC) adopted Resolution 1373 based on Chapter VII of the Charter of the UN.<sup>103</sup> This resolution establishes a committee for the proper implementation of what contains in the resolution called the Counter Terrorism Committee (CTC).<sup>104</sup> What is clear in Resolution 1373 are the obligations of states to deter terrorist activities which include the suppression of terrorist funds<sup>105</sup> and the exchange of information regarding terrorism.<sup>106</sup> There is no human right element within the resolution. Monitoring performance against other international conventions, including human rights law, is outside the scope of the CTC’s mandate. However, the CTC welcomes parallel monitoring observance of human rights obligations.<sup>107</sup>

---

<sup>100</sup> UN General Assembly Res. 57/219 para. 1

<sup>101</sup> Ibid para. 2

<sup>102</sup> UNCHR Res 2003/6 para. 3

<sup>103</sup> Gehr (2004) pg. 41

<sup>104</sup> Resolution 1373 (2001) para. 5

<sup>105</sup> Ibid para. 2

<sup>106</sup> Ibid para. 3(a)

<sup>107</sup> Gehr (2004) pg. 44

## 4.2. Regional Measures for Countering Terrorism

In order to fully realize if human rights elements are integrated into counter terrorism legislations, it is also important to look at the regional and national measures against terrorism. Regional counter terrorism measures are drafted according to the needs and the situation that the specific region is experiencing. This can serve as an example for states that a counter terrorism law need not be exactly like international conventions but at least adhere to the basic principles it contains. We shall look at several regional conventions and treaties and point out the provisions that mention the protection of the certain human rights.

The Organization of American States drafted with a terrorism convention that mainly prohibits the kidnapping, murder or assaults against protected persons.<sup>108</sup> Like the 1973 Protected Persons Convention, the 1980 Vienna Convention and the 1994 UN Personnel Convention, it protects the security and liberty of a person, a right stated in Article 9(1) of the CCPR. Article 4 and 8 of the convention says that any person who is deprived of his freedom in the process of applying the convention shall enjoy the legal guarantees of due process<sup>109</sup> and should have the right to defend himself,<sup>110</sup> ensuring a fair trial for the offender.

The Council of Europe Convention on the Prevention of Terrorism says straight out in its Article 12(1) that the criminal acts referred to in the convention should be carried out while respecting human rights obligations, in particular the right to freedom of expression, freedom of association and freedom of religion.<sup>111</sup> Moreover, the offender is given the right to be visited by a representative from his state of nationality and a representative from the state where he committed the offence.<sup>112</sup> So far, this Convention has been the only one that mentioned specific rights that should not be compromised while trying to counter terrorism.

---

<sup>108</sup> 1971 OAS Convention article 1

<sup>109</sup> Ibid article 4

<sup>110</sup> Ibid article 8(c)

<sup>111</sup> 2005 European Convention article 12(1)

<sup>112</sup> Ibid article 15(3)

And lastly, the Organization of African Unity's 1999 Convention on the Prevention and Combating Terrorism also has a provision that is similar to the Council of Europe's Terrorism Convention and other international terrorism convention, where the offender is entitled to a representative from his state of nationality and a representative from the state where he committed the offense and should be informed of these rights.<sup>113</sup>

#### 4.3. Observed Trends

What can be seen in the conventions and resolutions is how human right elements are acknowledged and should be integrated when drafting or applying counter terrorism policies. States try to maintain a balance between the fight against terrorism and human rights. Some states have also come up with their own domestic measure to combat terrorism. For example, the Council of Europe has set up Guidelines which serves as a guide for states in formulating their anti-terrorist policies, legislations and operations. The Guideline cover the absolute prohibition of torture, the collection and processing of personal data by state authorities, measures interfering with privacy, arrest, legal proceedings and detention, asylum and extradition, the right to property, derogations; and compensation for victims of terrorist acts.

Moreover, not only is the importance of human rights the main factor that can be seen, but also, the type of right it pertains to. Looking back at all the provisions provided for in the conventions regarding the right of the offender, it can be seen that they protect different kinds of civil and political rights. As what have been pointed out in the previous section, they usually refer to Article 14(1) and 14(3) of the CCPR. Most of it pertains to the right to be treated fairly at all proceedings of their trial and of their extradition. Another thing that can be observed is that the victim's rights under the conventions are in a way protected. The victim's rights that are protected are also rights under the CCPR: the right to life and the right to security and liberty of a person.

---

<sup>113</sup> 1999 OAU Convention article 7(3)

Therefore, in formulating international and domestic counter terrorism policies, the trend is to protect the right to life and the right to liberty and security of people by deterring terrorism and on the other hand protect the civil and political rights of the alleged terrorist or offender or the person who has committed the offence. Several conventions have pointed out what kind of approaches should be done in order to deter terrorist activities. Some have also pointed out what kind of activities should be regarded as terrorism. And some have also provided a guideline for deterring terrorist attacks.

Also these conventions provide a guideline for states when legislating domestic counter terrorism laws. It may not be the case of including each and every single provision of the international convention. States' experiences differ from one another and approaches. Thus, it is also important to recognize the principles that are integrated into them, i.e. the balance between counter terrorism and human rights

Looking back on the previous chapter and this chapter, there can be a few criteria that can be drawn on how governments should legislate their counter terrorism law. First is that it must comply with human rights law. Especially when states have ratified human rights conventions, it is expected that they comply with their human rights obligations, therefore, making sure they do not neglect it even when countering terrorism. Second is that the right or freedom to be restricted by a counter terrorism measure must allow for a limitation rather than an exclusion. As have been mentioned in chapter 3, there are some rights that cannot be derogated from even in times of hostilities. There should be safeguards on the rights it wishes to limit. Third is that the counter measures that limit rights have to be necessary. States should be able to assess if a counter terrorism law is really necessary to address terrorism. This has been illustrated by the international community responding with terrorist conventions. States should also double check if the measure that limits rights is an approach that would help authorities to achieve their goals in deterring further damages. And fourth is that counter terrorism measures seeking to limit rights must be proportional to the damage it wishes to deter.

## **5. The Human Security Act of 2007 of the Republic of the Philippines**

After discussing how the international community approached terrorism, it can be inferred that it was a product of terrorist like events in society, wherein the international community saw the need for counter terrorism efforts. Also it pointed out several principles and guidelines that states have to follow in order to address situations of terrorism. Moving on to the situation in the Philippines, and the country's anti-terrorism laws, this chapter shall discuss the domestic events in the Philippines and how they pressured the Philippine government to legislate such a law. This will enable us to assess the necessity of the law and understand the pros and cons for a country like the Philippines who has been confronting insurgencies for a very long time. This could be helpful to illustrate how the Philippines legislated a counter terrorism law in its own context.

### **5.1. Domestic and International Events leading the way for the legislation of the Human Security Act**

Armed guerilla struggle and insurgencies have bombarded Philippine society for nearly 40 years. Problems related to law and order such as local insurgencies, separatism, crime and acts of terrorism continue to preoccupy the country. During the Aquino Administration in 1986 until 1992, violence related to rebellion reached over 310 incidents.<sup>114</sup> Police figures showed that violent crimes increased by 25 percent in the first half of 2002, over the same period in the previous year, while robbery and theft were up 40 percent.<sup>115</sup> And since then until the present, there has been an increase by another 50 percent.<sup>116</sup> The activities connected to these armed struggles and insurgencies have caused conflict and terror that affect the efficacy of the Philippine state. Moreover, it has also affected the security of the Filipino population, as well as the economy of the country with regard to prospective investors that back out due to security concerns. Also, the terrorist activities have scared off tourists due to reports of kidnappings, which in turn affected the whole tourism industry. This section shall discuss how events in society gave birth to the

---

<sup>114</sup> Lara and Champain (2009) pg. 12

<sup>115</sup> Chareudin (2003) pg. 42

<sup>116</sup> Lara and Champain (2009) pg. 12

insurgent groups causing violence in the country. It shall also discuss the responses made by the Philippine government which appeared to be ineffective in deterring terrorism and basically led to the legislation of the Human Security Act.

#### 5.1.1. Muslim Insurgency

Muslim insurgency has been present due to the long running feeling of oppression and neglect by the central government on the Muslim population. This can be traced in events of Philippine history such as the visits of missionaries from different cultural and religious backgrounds and the colonization of Spain and the United States.

Islam reached the Philippines when Muslims missionaries came in towards the 15<sup>th</sup> century.<sup>117</sup> Islamization of the Philippine population occurred especially in the southern part of country. With the Spaniards' arrival in the 1500s, Christianity was introduced to most islands in the Philippines. Most of the northern island population was converted from Islam and Paganism to Christianity. This left the Philippines up until today as one of the biggest Christian countries in Southeast Asia. Amidst Christianization, the southern part of the Philippines in some regions, including the islands of Sulu and Mindanao, among the districts of Lanao, Cotabato, Davao, Basilan, and Balabac.<sup>118</sup> Manila<sup>119</sup> being the center of governance during the Spanish colonization gave the Southern Mindanao region a feeling of neglect and indifference to the rest of the Filipino Christian population. The Moro were treated unfairly by deprivation of their ancestral lands.<sup>120</sup> This feeling of neglect, oppression and being persuaded to convert fueled resistance against the colonizers. It also elevated the Filipino Muslim population to fortify themselves against Filipino Christians, whom they perceived as people who yielded to oppressors and colonizers. The Moros,<sup>121</sup> as they had done with the Spanish, fiercely refused to be subdued and converted under the Americans. In 1946, there was a migration of a Filipino Christian farmer population from

---

<sup>117</sup> Choi (2009) pg. 5

<sup>118</sup> Ibid pg. 6

<sup>119</sup> Manila is approximately 978 km from the center of Mindanao

<sup>120</sup> Choi (2009) pg. 10

<sup>121</sup> Moros or moors was the term by the Spaniards to refer to the Muslim population

the Northern Islands to the Southern Islands. This led to the Muslim population becoming a minority in their own region. Filipino Muslims were given less rights and became marginalized compared to the Christian population at that time.<sup>122</sup> This sort of marginalization can be seen as a cause for their uprising and their request for independence from the central government.

In the 1970s, a civil war sparked off between the Moro National Liberal Front (MNLF) and the Armed Forces of the Philippines (AFP), where the Moros fought for separation from the Philippines. With the signing of the Tripoli Agreement in 1976, The MNLF abandoned its separatist aspirations and settled for the establishment of an autonomous region, now called the Autonomous Region of Muslim Mindanao (ARMM). From the settlement reached between the MNLF and the Philippine state, small factions broke off from the MNLF. The first one, in 1984, is the Moro Islamic Liberation Front (MILF). Where the MNLF engaged in peace processes with the government, the MILF wanted to continue its armed struggle. And in the 1990s, the Abu Sayyaf Group (ASG), founded by Adburajak Janjalani, also broke off from the MNLF.<sup>123</sup>

To date, there are three Islamic insurgency groups, the MNLF, MILF and the ASG, each having different aims; separation or more autonomy. The MNLF's purpose, being a secular and political movement, was to participate in the elections and with the aim of creating a federal state, where the Muslims would have the opportunity to create their own institutions.<sup>124</sup> The MILF on the other hand aims for the Moros to gain independence from the Philippines and to establish an Islamic state governed by Shariah law.<sup>125</sup> The ASG, the smallest and the most radical of the three Islamic separatist organizations, has been involved in several violent activities, like banditry and kidnap for ransom.<sup>126</sup> The ASG has

---

<sup>122</sup> Choi (2009) pg. 10

<sup>123</sup> Donnelly (2004) pg. 3

<sup>124</sup> Choi (2009) pg. 15

<sup>125</sup> Ibid pg. 17

<sup>126</sup> Ibid pg. 20



been suspected of having links with international terrorist groups like the Jemaah Islamiyah (JI) and the Al-Qaeda.

Though the ASG is considered the most notorious of all three Muslim insurgents, all these groups have been linked to activities that have caused terror in the country. During President Ferdinand Marcos' regime, the MNLF reached its height in terms of armed resistance with an estimated 30,000 fighters. At the peak of the hostilities during the period from 1972 to 1976, the Armed Forces had to commit up to 80 percent of its total resources just to keep the conflict at a manageable level.<sup>127</sup> And after the failure to effectively implement the ARMM discussed in the 1976 Tripoli agreement, more civil war burst out in Muslim Mindanao. However, these civil wars were mostly ceased by peace talks initiated by the Philippine Government. From President Corazon Aquino's term in the 1980s until the present administration, peace talks have been pursued to eradicate violence in the region.

Though peace processes have lessened violent activities by the insurgents, there are still ongoing attacks on the local population. From mall bombings to local military-insurgent confrontations, hostility is still present in the country. Ongoing attacks and bombing incidents occur from time to time. In September of 2009 alone, there had been 11 terrorist attacks made by different terrorist groups in the Philippines.<sup>128</sup> These recent attacks have caused a total of 56 deaths and 16 injuries, which include civilians, terrorists and military personnel.<sup>129</sup> Terrorist bombings on Mindanao increased in late 2002 and 2003. The attacks were initially thought to be the work of Abu Sayyaf, until February and March 2003, when the AFP accused the MILF of major bombings.<sup>130</sup> Though the insurgent groups are mainly concentrated in the southern part of the Philippines, their terrorist activities have reached Metro Manila, home to 11,553,427 people.<sup>131</sup> The *Valentine's Day*

---

<sup>127</sup> Ibid pg. 21

<sup>128</sup> ICPVTR (2009)

<sup>129</sup> Ibid

<sup>130</sup> Manyin (2003) pg. 11

<sup>131</sup> NSCB (2008)

bombing that occurred in 14 February 2005 took place not only in the southern part of the Philippines, but also in Makati City, located in the national capital region.<sup>132</sup> On 5 October 2009, ASG members attacked government troops providing security to a group of military engineers repairing a bridge in Sulu, which was bombed by Moro Rebels the week before.<sup>133</sup> And recently, on 13 April 2010, several bombings and a shootout between the military and ASG members occurred in Basilan.<sup>134</sup> Aside from the bombings, the ASG has also engaged in other terrorizing activities like kidnappings and beheadings. They have targeted not only the local population but also foreign missionaries, businessmen and tourists. In April 2000, Abu Sayyaf force, attacked a tourist resort in the Malaysian state of Sabah and kidnapped 21 foreigners, including Malaysians, Frenchmen, Germans, Finns, and South Africans. In July 2000, Abu Sayyaf seized three French journalists.<sup>135</sup> From soliciting ransom money, they gain resources to buy weapons, transportation, and communication equipments. The steady increase of the groups' strength makes it more capable of engaging in terrorist endeavors.

Allegations that these groups have connections with international terrorist groups and are using the Philippines as a training hub alarm the Philippine Government. Previous studies and reports have gone in depth to investigate how local and international terrorists have created ties with one another. The Al-Qaeda was able to establish links particularly with the ASG and the MILF.<sup>136</sup> In the early 1990s, Muhammad Jamal Khalifa, Bin Laden's brother in law, arrived in the Philippines to become the official Al-Qaeda representative in Southeast Asia. This made the country the central regional hub in Southeast Asia for financing radical Islamic organizations. Khalifa established local branches of the Saudi-based International Islamic Relief Organization (IIRO), which channeled funds to the Abu Sayyaf and Al Qaeda cells in the country.<sup>137</sup> The ASG also received training support from the Al-Qaeda. ASG members in the 1990s were trained in

---

<sup>132</sup> Ilagan (2005)

<sup>133</sup> ICPVTR (2009)

<sup>134</sup> Associated Press (2010)

<sup>135</sup> Niksch (2007) pg. 3

<sup>136</sup> Manalo (2004) pg. 48

<sup>137</sup> Desker (2002) pg. 165

Afghanistan before serving the ASG.<sup>138</sup> Ramzie Yoesef, an Al-Qaeda operative went to the Philippines to train ASG members for combat and also established an Al-Qaeda cell in Manila.<sup>139</sup> From the patterns created by Al-Qaeda in supporting terrorists group all over Southeast Asia, the Philippines serves as a vital location for channeling funds, goods and equipment such as firearms and explosives. In August 2001, Malaysian police intercepted Indonesians who were smuggling weapons from Setangkai Island in the southern Philippines to Indonesia.<sup>140</sup> The JI also decided to use MILF bases for training their members and for planning their next operation. In 2001, Khadaffy Janjalani reportedly approached Zulkifli, a key JI operative, and requested that JI train Abu Sayyaf members.<sup>141</sup>

The Philippines is thus facing a major problem with domestic terrorism. Fighting with the insurgents is not only the main issue but also deterrence is a must to maintain peace and order within the country. However, with a population made up of people coming from diverse religious backgrounds and undocumented inhabitants living in the rural and urban areas present a difficult setting for the Philippine Government to gather intelligence on the whereabouts of insurgents. The geographical setting poses a challenge for the military or law enforcers. The Philippines provides the perfect setting for international terrorist groups like the Al-Qaeda to use it as a hub for planning and training because it is made up of 7,107 islands abundant with forests and open seas at every corner. Therefore, the Philippines' porous and poorly controlled borders, the weakness in intelligence and law-enforcement institutions, including the political reluctance to admit the gravity of the threat are the counterterrorism challenges being faced by the Philippine government.<sup>142</sup>

#### 5.1.2. Efforts to Combat Terrorism

The Philippine government has tried to combat the insurgents and guerillas for years. It has laid out plans to address the situation in Mindanao. As an adherent to

---

<sup>138</sup> Ibid pg. 165

<sup>139</sup> Niksch (2007) pg. 5

<sup>140</sup> Ibid pg. 195

<sup>141</sup> Niksch (2007) pg. 4-6

<sup>142</sup> Manalo (2004) pg. 53

international conventions to fight terrorism, the Philippines have shown dedication in tackling the terrorist threats the insurgents exude. Just in the past decade, the Philippines have come up with different policies. One is the National Internal Security Plan (NISP) which was crafted by the National Security Council to address insurgency and other threats to national security by mandating all concerned agencies to comply and implement the said plan.<sup>143</sup> The NISP deals with the threats posed by the ASG and the MILF. In addition came two memorandum Orders that articulate the government's policy for combating terrorism. They are the Memorandum Order No. 31 dated October 12, 2001 by the Office of the President lists down the "Fourteen Pillars of Policy and Action Against Terrorism" and the Memorandum Order No. 37. The Fourteen Pillars lists down policy guidelines that different government agencies should follow. Memorandum Order number 37 further specifies the following measures that shall be undertaken in connection with the government's commitment to cooperate in the international struggle against terrorism.<sup>144</sup>

The Philippine Government also created a National Peace and Development Plan. The plan's intent is resolving threats by addressing the root causes of insurgency through economic, social, cultural and political reforms and development while defeating the armed elements and dismantling their political and military structure at the grassroots level through internal security operations. Given that Mindanao has been struck with decades of poverty compared to the other main islands, the government believes that extremism and insurgency can be eradicated through education and economic empowerment of the population. This plan also pushes for engagement with the MILF through dialogue and negotiations. With regard to the Abu Sayyaf Group and other similar elements, the government intends to pursue strong anti terrorist operations and law enforcement action against them without let-up.<sup>145</sup>

Aside from policies that guide actions made by the government, they have also engaged in military activities. Since August 2000, there has been constant military pressure

---

<sup>143</sup> Victoria (2008)

<sup>144</sup> Manalo (2004) pg. 12-13

<sup>145</sup> Filler (2002) pg.137

from the government. This has intensified through the years wherein more troops have been committed to deal with the insurgents, especially the Abu Sayyaf. In mid-2002, more troops were sent to the Jolo region. Moreover, the intensification of confronting the insurgents through military means can be seen in how the Philippine Government received military aid from the US. The Philippines have had a long standing political relationship with the US since the signing in 1989 when Spain ended its colonization and turned over the Philippines to the US. During the Second World War, the US used the Philippines as a military base for its endeavors in Southeast Asia. Though military ties have weakened since the US ceased control over bases in the Philippines, it has been revived through the fight against terrorism. The US had a strong will in combating terrorism worldwide. And the Philippines has been the perfect ground for deterring terrorism by eradicating the Southeast Asian terrorist hub. For the 2002 Balikatan Operations, the US has sent 1,300 US troops to train, advice and do other non-combatant assistance for the AFP.<sup>146</sup> The Philippine Government also considered in joining ties with other countries aside from the US. Given that the Philippines is being used as a regional terrorist hub, it is somewhat pressured to strengthen its counter terrorist tactics and to share information with its neighboring countries. The Philippines signed an agreement with Indonesia and Malaysia “on information exchange and established communication procedures to fight terrorism and transnational crime in the region.”<sup>147</sup> The Philippines also has a defense agreement with five other ASEAN member states covering such items as exchanges of defense personnel, information and intelligence exchanges, and research and development of defense products. More agreements with neighboring countries led to further pressures to strengthen its counter terror tactics by reinforcing intelligence gathering regarding terrorist activities, whereabouts and plans. Compared to Indonesia and Malaysia, the Philippines was the only one without a proper law dealing with terrorism, which further deepened the demand to have one.

---

<sup>146</sup> Niksch (2007) pg. 7-8

<sup>147</sup> Chareudin (2003) pg. 44

International and local pressures on the government to acquire reliable information create a situation where authorities have to engage in rigorous intelligence gathering. The blurred distinction of roles between the Philippine National Police (PNP) and the AFP makes it hard to determine who is in charge of intelligence gathering operations regarding terrorism. The PNP is tasked to support the AFP in its internal security operations and conversely the AFP is tasked to support the PNP in its anti-criminality drive.<sup>148</sup> As explained by Filler (2002):

*The amorphous character of the ASG has blurred the responsibility between the military and police for combating it. The rivalry between the military and police units on the ground for prestige and influence prevent the full and effective utilization of both forces against the ASG.*<sup>149</sup>

Unclear counter terrorism roles designated to the military and the police create an environment where the two entities are in competition with one another to gain prestige and prove the competency of the agency. This kind of competition may lead the military or the police to engage in rigorous intelligence gathering techniques which may endanger the rights of offenders within their custody. Also, much focus and over dependence on the role of the military to counter terrorism has left out the civilian component of the society.<sup>150</sup> This then illustrates the lack of checks and balance of military activities. A commission led by former Philippine Supreme Court Justice Jose Melo confirmed that members of the military were responsible for the “majority” of the extrajudicial killings.<sup>151</sup> And what is call mores attention is the possibility that the military is using their counter terrorism operations as an excuse to execute leftist activists. As cited by Lyew (2010), under the Arroyo Administration:

---

<sup>148</sup> Filler (2002) pg. 136

<sup>149</sup> Ibid pg. 141

<sup>150</sup> Ibid pg. 141

<sup>151</sup> Jimenez (2007)in Lyew (2010) pg. 191

*‘At least 830 people [were] killed in an extrajudicial fashion, including 365 mostly left-leaning political and social activists, . . . journalists, judges, and lawyers known to be sympathetic to leftist causes.’ These extrajudicial killings were not all caused exclusively by the Philippine government's fight against terrorism, but they were ‘committed by death squads . . . [that] operate[d] under the protective umbrella of regional [Mindanao] military commands’ aimed at stopping terrorism.’<sup>152</sup>*

This kind of allegations reflects poor control of the government on its counter terrorism operation, and thus, compels the Philippine Government to address this fear of abuses from the military.

The Philippine Government’s efforts seem to have weak outcomes and have not stopped the actions of these groups. With less positive results coming from recent government actions, a much direct approach can be adopted. Policies may provide guidelines for dealing with terrorist activities, but, they do not cover situations where the law has to address the crimes of terrorism committed within the country. The need for gathering intelligence in order to deter terrorism is of prime importance. The Philippine Government is obliged to gather and exchange terrorist information through agreements with neighboring countries. However, activities related to information gathering may be dangerous for a common person suspected of being a terrorist or is acquainted with information about the terrorists’ plots, i.e. he or she may be subjected to torture in order to obtain the information. Therefore, with a country like the Philippines committed to eradicating terrorism and has dealt with decades of terrorist threats, it should at least have an anti or counter terrorism law to further formalize and guide how authorities should deal with terrorist within their custody or on how they are to proceed with investigations relating to terrorism.

---

<sup>152</sup> Lyew (2010) pg. 191

In 2007, the Philippine government passed a counter terrorism law entitled Republic Act No. 9372: An Act to Secure the State and Protect Our People from Terrorism or the Human Security of 2007 of the Philippines (HSA). This law aims to “protect life, liberty, and property from acts of terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the law of nations.”<sup>153</sup> The government said the terror bill is necessary to “give it the teeth” to fight militants in the south of the country, particularly the Muslim extremist group Abu Sayyaf.<sup>154</sup> This means that the government will be able to criminalize acts of terrorism and to approach terrorism directly rather than treating it like any common criminal act.

Prior to the passing of the HSA, concurrent bills were worked on by both chambers of the Philippine Congress, the Upper House or the Senate and the Lower House or the House of Representatives (HOR). The preparatory work on the bill in the Senate started in October 2005 under the 13<sup>th</sup> Congress. The Senate Bill (SB) 2137 was prepared and submitted jointly by the Committee on Public Order and Illegal Drugs, Justice and Human Rights and Finance together with Senators Manuel Villar, Panfilo Lacson, Juan Ponce Enrile and Jose Ejercito Estrada. Each of them had their own version of the bill and collaborated to come up with SB 2137. At the HOR, House Bill (HB) 4839 was filed on 12 October 2005 by Congresswoman Imee Marcos. In both houses, the bills went through several amendments prior to their second reading and third reading. In the Senate, it was voted 16 in favor for approval and 2 against and was transmitted to the HOR. At the HOR, 117 representatives vote yeas for the approval on third reading and was then transmitted to the Senate. However the SB 2137 and the HB 4839 had disagreeing provisions. At the end, the Senate’s version was adopted in a bicameral committee on 8 February. Both the Senate and the HOR ratified the bicameral report in a two-day special session called for by President Arroyo. In a matter of days, President Arroyo signed the bill into law. For a law that may impede certain human rights, it should have been given more time in legislating.

---

<sup>153</sup> HSA of 2007 section 2

<sup>154</sup> BBC News (2007)



Also, the record of the congress on the legislation of the HSA did not illustrate any inputs coming from civil society which could have been helpful in making the law more applicable and less dangerous in character.

## 5.2. Criticisms against the Human Security Act

Though directed towards the protection of national security, this law has been subject to criticisms from civil society and opposition members of the government. It has called the attention of the media and especially leftist activists. It has been criticized as a “law [that] will provide a legal shield for human rights violators and will surely encourage more abuses in government.”<sup>155</sup> The definition of terrorism fails to include crimes of state terrorism, which worries human rights activists as they see the law’s implementation within a context of hundreds of extrajudicial murders and disappearances in the past six years.<sup>156</sup> It has also been criticized as a tool to authorize preventive detention, expand the power of warrantless arrest, and allow for unchecked invasion of our privacy, liberty and other basic rights.<sup>157</sup> Also, due to the contents of the law that provides for wiretapping and bank account investigations, in an opinion made by a local journalist, the HSA would cause incidents like:

*Persons merely suspected of engaging in terrorism may be arrested without warrant and detained without charges.*

*They may be placed under house arrest, prohibited from using their cell phones, computers and any other means of communication, even when they are granted bail on the ground that evidence of guilt is not strong. They may also be subjected to surveillance and wiretapping, as well as*

---

<sup>155</sup> Dollaga (2007)

<sup>156</sup> Uprising (2007)

<sup>157</sup> Ibid

*examination, sequestration and freezing of bank deposits and other assets, on mere suspicion that they are members of a “terrorist organization.”*<sup>158</sup>

Critics of the legislation also pointed to its broad and vague definition of a terrorist crime. Human Rights Watch, a non government organization, was also concerned about the HSA. It said that the definition of terrorist acts in the HSA is “vague and overbroad” and could allow the government to brand a mere protestor opposing the government as a terrorist.<sup>159</sup> Under the act, eleven crimes are listed as terrorism so long as they attempt to create “a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give into an unlawful demand.”<sup>160</sup> Human Rights Watch also raised concerns specifically about Articles 18 and 19 of the new law, which doubles the period that the police can detain persons without judicial supervision, allowing up to three days of custody before the detainees must be brought before a judge. In a country where mistreatment in detention remains a major concern, this provision opens the door to further abuse.<sup>161</sup> Not only advocacy groups and the media are feasting on the deficient definition of terrorism in the HSA. Aquilino Pimentel Jr., a senator and a well known lawyer, said that the law does not define terrorism but rather “[i]t merely makes it illegal for persons to commit six offenses already punishable under the Revised Penal Code and six other crimes already punishable under special law and martial law decrees if done to sow panic in the communities.”<sup>162</sup> Moreover, Senator Jamby Madrigal said in an interview that though amendments were made to the bill, the substantive part needed for safeguarding rights were not included.<sup>163</sup> With regard to the wordings and format, the contents of the law seemed to be “one of the most incoherent, disorganized and disjointed laws our Congress has ever passed. A mix-and-match collection of 62 sections, the law has no discernible structure, no headings or subheadings, and no groupings of sections.”<sup>164</sup>

---

<sup>158</sup> Ibid

<sup>159</sup> Human Rights Watch (2007)

<sup>160</sup> Uprising (2007)

<sup>161</sup> Human Rights Watch (2007)

<sup>162</sup> Senate of the Philippines Press (2007)

<sup>163</sup> Himagsik Kayumanggi (2007)

<sup>164</sup> Diokno (2007)

Overall, the problems that were pointed out by several organizations and individuals are: (1) the definition of terrorism; (2) the possibility that the HSA will be used in an abusive manner; and (3) the concern that it may be used against people who oppose the government and brand them as a group that pursues terrorist aims. These criticisms are relevant in order to align the focus of the analysis in the next chapter.

## **6. Is the Human Security Act in line with International Standards?**

After looking into the reason why the law was enacted, in this section we shall try to dissect each section and see if it is in accordance with international standards. And for purposes of the analysis, we shall pick out the most relevant sections with regard to human rights of the offender. In order to answer the research question, it is important to put the HSA side by side with international conventions and see if it fulfilling human rights obligations in the Philippine Government's battle against terrorism. And it is also vital to answer the criticism coming from civil society, i.e. the media and some advocacy groups.

### **6.1. Fulfilling Human Rights Obligations while Countering Terrorism**

For purposes of getting a clear picture of what should be done by states, let us recall what the international conventions/declarations states with regard to counter terrorist activities. First is that counterterrorist measures seeking to limit rights must be necessary. Second, it is asked of states, in cooperation with other states, to combat terrorism, e.g. is that states should also comply with human rights standards and conventions at all times, even in times of domestic unrest caused by terrorist or counter terrorist activities.<sup>165</sup> Third is that the restriction on rights or freedoms by a counter terrorism measure should have a limitation, e.g. derogable and non-derogable rights during a state of emergency. And fourth is that counter terrorism measures seeking to limit rights must be proportional.

---

<sup>165</sup> Some examples are: Article 4 of the CCPR, paragraph 6 of the UN Security Council Resolution 1456, Preamble of the Resolution 1269

### 6.1.1. Is the HSA necessary?

The writing of several anti and counter terrorism conventions plus several resolutions from the UN shows the international community's willingness to eradicate terrorism. Following this come states' obligations to combat terrorism and make sure that their territory shall be free from any form of threats of terrorism. The Philippines heeded the call of the international community to strengthen its fight against terrorism. Over four decades, it has shown domestic efforts in dealing with terrorism by conducting peace negotiations, implementing cease fires and strengthening its military capabilities to gather and confront terrorist organizations within its territory. Internationally, the Philippines have ratified eleven out of the twelve international conventions relating to terrorism and is a signatory to the 2005 Nuclear Terrorism Convention. This means that eleven of the international conventions pertaining to terrorism are relevant to what should be contained in a legislation directed towards terrorism. The legislation of the HSA serves as commitment of the Philippine Government to thwart terrorism and be able to protect the rights that has a possibility of being violated.

However, the question is if the HSA and the provisions it provides are really necessary for combating terrorism. In the previous chapter, the Philippines have shown attempts and policies that are directed towards preventing and fighting terrorism. But there have been no signs of an improvement in the situation but rather the threats of terrorism on Philippine soil demand a more solid approach. Widespread corruption and abuse within the military ranks and the multiplicity of motivations for terrorist acts demonstrates the difficulty in attempting to address terrorism by traditional methods.<sup>166</sup> And by criminalizing acts of terrorism, it may somehow decrease the probability of a group to engage in terrorist like methods to pursue their goals. Studies have shown that when governments introduce anti-terrorism policies and laws, terrorists are more likely to decrease their activities. An example is a study made on aircraft hijacking. The introduction

---

<sup>166</sup> Brown and Wilson (2007) pg. 44

of regulations increases the probability of apprehension of hijackers.<sup>167</sup> And with the possibility of an apprehension, there has been a decline in hijacking activities.<sup>168</sup> Therefore in this perspective, the HSA criminalizing terrorism is necessary in order to decrease the probability that people will engage in terrorist activities.

In another perspective, an anti-terrorism law may increase a state's probability of actually deterring terrorism. The HSA can serve as a tool, not only to decrease terrorism, but also, to regulate counter terrorism activities. As what has been mentioned in the previous chapter, the military has been suspected of using torture or abusive methods in order to achieve their goal. The HSA provides for prohibition of torture on detainees suspected of terrorism.<sup>169</sup> Also with the need for reliable information on the tactics and whereabouts of terrorists in order to prevent further attacks, the HSA provides for the regulation of wiretapping and bank account investigations that may be conducted by authorities. Though regulated, wiretapping and bank account investigations are perceived as impeding certain human rights. In the next section, we shall see if the provisions in the HSA regarding these activities are in violation of international human rights law.

#### 6.1.2. Is the HSA complying with international human rights law?

In this section we shall answer if the HSA is in compliance with international human rights law. We shall also check if the provisions in the HSA impeding certain human rights are allowed following the same legal framework.

The Philippines has ratified a number of UN human rights conventions, including the two covenants, the CCPR and CESC. And it is expected that the Philippines, under any circumstances, should be able to adhere to what is provided for in these conventions and covenants. This means that each legislative act should respect the principles embodied

---

<sup>167</sup> Landes (1977) abstract

<sup>168</sup> Ibid pg. 36

<sup>169</sup> HSA of 2007 section 24

in international human rights law, including the HSA. The concerns expressed by the media and some advocacy groups were, as mentioned earlier, regarding that the HSA may impede on the rights of those accused of engaging in terrorist activities. Let us see the provisions the in the HSA that are connected to these allegations of probable abuses. These concerns are directed towards the provisions on warrantless arrest, the detention of offenders of the HSA and the issue of wiretapping and investigation into the bank accounts, which are perceived as a violation to the right of privacy (Sections 8-16 and Sections 27-43).

Sections 18-26 discuss the rights of detainees and offenders. It reiterates the obligation of authorities to recognize their rights. Section 18 decides the “period of detention without judicial warrant of arrest.” It states that the person identified of committing terrorist acts should be delivered to the proper judicial authorities within three days after the arrest or apprehension of the suspect, given that the arrest was done on the basis resulting from “surveillance under Section 7 and examination of bank deposits under Section 27 [of the HSA].” And under the same section, the judge who shall look into the reasons for arrest of the person should also be able to assess if the offender has been tortured prior to his delivery to the judge. Section 19, which discusses the period of detention in the event of an actual or imminent terrorist attack, gives more guidelines on how an alleged terrorist’s detention should go through proper procedure even if it is in the midst of an attack. Both sections protect the offender from being detained without establishing proper reasons and evidence.

There are three things that can be seen in the two sections, the right to fair trial, the right to be free from torture and the right to be free from arbitrary detention. These sections, in a way, reiterate the rights of the offender by listing down proper procedures for the arrest. We can see here that the process of the arrest and detention was rushed because it eliminated the process of acquisition of a judicial warrant of arrest. Because the HSA is dealing exactly with countering terrorism, time is of vital importance for the authorities and when matters arise they should be able to act immediately. Even though they have to act quickly to address the situation at hand, there is still a process that authorities have to

follow in order to avoid circumstances that the military or the police have control over the situation without any verification of their actions. A judge is made available in these situations to provide a check and balance to the arrest or detention. This prevents abuses of power by the military or police to arbitrarily arrest or detain suspects and prevent abuses (i.e. torturing the victim).

Even during detention, suspected terrorist are provided certain rights. The rights of a person under detention from Section 21 are:

- a) To be informed of the nature and cause of his arrest, to remain silent and to have competent and independent counsel preferably of his choice.
- b) informed of the cause or causes of his detention in the presence of his legal counsel;
- c) allowed to communicate freely with his legal counsel and to confer with them at any time without restriction
- d) allowed to communicate freely and privately without restrictions with the members of his family or with his nearest relatives and to be visited by them; and
- e) Allowed freely to avail of the service of a physician or physicians of choice.

These rights mentioned in HSA Section 21 are some of the rights mentioned under CCPR, Article 14(3). The similar rights found in the HSA and in Article 14(b) are the rights to be informed in detail of the nature and cause of the charge against him, to have time and facilities for the preparation of his defense and to communicate with counsel of his own choosing. The HSA added the right to communicate freely and privately without restrictions with the members of his family or with his nearest relatives and to be visited by them and the right to be allowed to freely avail the service of a physician or physicians of choice.<sup>170</sup> This allows the detainee to prove or disprove if he has been tortured during his detention. It allows for the checks and balance of how authorities treat their detainees,

---

<sup>170</sup> HSA of 2007 section 21(d) and (e)

therefore, protecting the detainee for any form of violence or harm. Though the other parts of Article 14, which pertains to the right to a fair trial, were not included in the HSA, this does not mean that the Philippines does not recognize the other rights. The other rights pertaining to fair trial is included in the Philippines' Revised Rules of Criminal Procedure. Rule 115 states the right of the accused and is applicable at all kinds of trial done in a Philippine court of law.<sup>171</sup> An example is Article 14(g) of the CCPR and paragraph (e) of Rule 115 both express that a person charged with a criminal offense should not be compelled to testify against himself or to confess to guilt. So even with trials relating to violations of the HSA, fair trial is still recognized by Philippine courts. This implies that this part of the HSA is in compliance with provisions under Article 14 of the CCPR and even restate the rights of detainees even if has already been mentioned in the Philippines' Rules of Criminal Procedure.

Aside from rights to fair trial in HSA Section 21, Section 24 reiterates that detainees should be free from torture and coercion during the process of investigation and interrogation. It specifies that any form of physical pain or torment, or mental, moral, or psychological pressure is prohibited. The Philippines have ratified the CCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The CCPR also says that the torture is prohibited even under a state of emergency and considered as a non-derogable right. The Philippines must be able to assure that no one will be subjected to torture within their state, even during public emergencies. Even if the situation where terrorists are involved (i.e. armed conflict in Southern Mindanao due to terrorists like the ASG) may not pass for a public emergency, torture should not be used on the basis of any grounds, even if it is for acquiring vital information. CCPR General Comment 7 paragraph 1 states that "provisions making confessions or other evidence obtained through torture or other treatment contrary to Article 7 inadmissible in court." HSA Section 24 provides that information gathered through the use of coercive methods will be considered inadmissible as "evidence in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing." This therefore

---

<sup>171</sup> See Annex II: The Revised Rules of Criminal Procedure, Rule 115-the Rights of Accused



prohibits the military or any authority in charge of investigation or the detention of an individual to use torture under any circumstances, even if it was related to terrorism.

The right to privacy is expressed in Article 17 (1) of the CCPR states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.” In ICCPR General Comment 16, it says that “[t]he introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.”<sup>172</sup> It also expresses that “[a] decision to make use of such authorized interference must be made only by the authority designated under the law [...]”<sup>173</sup> Sections 7-17 discuss how to proceed with wiretapping in the event that is necessary to acquire any information vital to countering terrorism. Intelligence is important in order to know the whereabouts of terrorists and the terrorists’ plans and their next move and can be used to deter terrorism and minimize the damage terrorism could cause. Wiretapping is seen as a move to strengthen information gathering. Sections 7 and 8 tackles wiretapping and the ability of the Court of Appeals to grant permission to proceed with given that there is a good reason to listen to a person’s conversation, i.e. he is suspected of planning a terrorist attack. As mentioned in the previous chapter, this provision worries people regarding their right to privacy. However, the HSA does not provide for instantly wiretapping a person’s conversation without permits and notice to authorities. HSA Section 8 lists down the procedures that should be undertaken before wiretapping. The authority who wishes to wiretap someone’s conversation should be an enforcement official authorized by the Anti-Terrorism Council.<sup>174</sup> The enforcement official should give a

---

<sup>172</sup> CCPR General Comment 16 para. 4

<sup>173</sup> Ibid para. 8

<sup>174</sup> As specified under section 53 of the HSA, the Anti-Terrorism Council’s mandate is to implement the HSA and assume the responsibility for the proper and effective implementation of the anti-terrorism policy of the country. The Council shall keep records of its proceedings and decisions. All records of the Council shall be subject to such security classifications as the Council may, in its judgment and discretion, decide to adopt to safeguard the safety of the people, the security of the Republic, and the welfare of the nation.

written application to a division of the Court of Appeals<sup>175</sup> in order to receive a judicial authorization to wiretap.<sup>176</sup> The investigation of bank accounts can also be perceived as an issue of invasion to the privacy of an individual. And similar to what has been provided in the HSA concerning wiretapping, the investigation of bank accounts also goes through due process. A judicial authorization is required prior to investigation.<sup>177</sup> The official who wishes to conduct an investigation of a bank account goes to the same procedure of requesting for an authorization to wiretap.<sup>178</sup>

This demonstrates that the investigation activities such as wiretapping and investigation of bank accounts go through a legal process and is provided by law. Before any investigation, the judge of the Court of Appeals shall assess whether it is truly necessary to proceed with such activities. This demonstrates that the interference on the privacy of a person is provided for by law and is necessary in order to deter an activity that may cause further terrorist attacks.

Some of the rights that have just been discussed are non derogable rights, i.e. the right to be free from torture. Here it illustrates that the Philippine lawmakers are aware of the possibility of torture incidents when dealing with terrorists. It also shows that the Philippines recognizes what is provided for in Article 4 of the CCPR. Some of the rights are not included under CCPR, Article 4. But the HSA still provides for safeguards on these rights.

### 6.1.3. Proportionality of the Measures embodied in the HSA

Impeding or limiting certain human rights is not prohibited only if it is necessary to protect other rights (i.e. the right to life) or other important aspects of society. The first right that the HSA limits is the right to arbitrary detention. As mentioned in the previous

---

<sup>175</sup> The Court of Appeals is the one mandated to provide for the permission to allow wiretapping or bank account investigations because these activities are considered as the “the last resort” for the investigation.

<sup>176</sup> HSA of 2007 section 8

<sup>177</sup> Ibid section 27

<sup>178</sup> Ibid section 28

section, a person can be detained for three days even without judicial warrant of arrest. The provision for restriction to travel can be put in this context as well. In Section 26 of the HSA states that” In cases where evidence of guilt is not strong, and the person charged with the crime of terrorism or conspiracy to commit terrorism is entitled to bail and is granted the same, the court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he resides or where the case is pending, in the interest of national security and public safety.” These kinds of measures prevent a possible attack that may cause more damage to society and impair the right to life of others. The Philippine Constitution provides that “the right to travel [shall not] be impaired except in the interest of national security, public safety, or public health.”<sup>179</sup> As a terrorist act is perceived as dangerous to other rights, the history of preventative detention in Revised Penal Code shows a longstanding practice that supports the reasonableness of the HSA's three-day preventative detention.<sup>180</sup> This practice does not entirely exclude the right to be free from arbitrary detention. The HSA provides for a process that authorities have to follow when they have arrested and detained someone without an arrest warrant. The period of three days allows for the authorities to look for a judge to whom the person should be delivered to.<sup>181</sup> Therefore, to be arrested and detained without a warrant is not a matter of arbitrary detention. There is a process for the detention covered for by the rule of law in the HSA preventing arbitrarily detaining a person. In Section 18 of the HSA regarding warrantless arrest and detention, it states that “[t]he police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter’s residence or office nearest the place where the arrest took place at any time of the day or night.” This allows for a check and balance of the actions of police regarding the arrest and the detention of a suspect. Moreover, the authorities cannot just arbitrarily arrest a person without prior evidence that he or she is involved in crimes of terrorism. The individual’s arrest should be on the basis of an investigation of his or her bank account or through wiretapping activities.<sup>182</sup> Thus, the

---

<sup>179</sup> The 1987 Philippine Constitution section III

<sup>180</sup> Lyew (2010) pg. 209

<sup>181</sup> HSA of 2007 section 18

<sup>182</sup> Ibid

limitation set on the right to be free from arbitrary detention does not at all exclude the said right. There are safeguards and procedures protecting the person from any abuse from the authority. Also, this kind of procedure prevents the abuse of authorities to arbitrarily detain or arrest a person without any valid ground.

Another right affected by provisions in the HSA is the right to privacy. There are a number of ways to deter terrorism. One of these is cutting off resources and another is to find out about whereabouts and tactics. With provisions under the HSA allowing wiretapping and investigation of bank accounts, authorities may gather information vital for preventing terrorist attacks. It is reasonable that the HSA permits law enforcers to identify the character of financial assets and to seize these assets if they would likely support terrorist activities. This kind of practice is not only found in the HSA but also in international and other domestic law of the Philippines.<sup>183</sup> Lyew (2010) gave a few examples of these international and domestic laws that illustrate this sort of practice. The Anti Money Laundering Act of 2001 allows government officials to examine and freeze bank deposits to prevent the crime of money laundering, a known source of financing for terrorist activities.<sup>184</sup> On the international level, the 1999 Terrorist Financing Convention states that state parties should take “appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in Article 2 [of the convention] as well as the proceeds derived from such offences, for purposes of possible forfeiture.”<sup>185</sup>

Therefore, in the two issues discussed, the measures like wiretapping and the detention without warrant of arrest are measures that allows the HSA to achieve its main objective of countering terrorism through the acquisition of significant data and information and the prevention of an alleged terrorist of causing more harm. The limitation

---

<sup>183</sup> Lyew (2010) pg. 211

<sup>184</sup> Anti-Money Laundering Act of 2001 section 7

<sup>185</sup> 1999 Terrorist Financing Convention article 8 (1)

on the rights are not entirely excluding the rights but in a way providing for procedures that safeguard against the abuses of authorities.

Moreover, the HSA provides sections for safeguards against abuses by the authorities. Some sections discuss the penalty for an authority that violated the rights of a detainee. The end of Section 18 mentions the corresponding penalty if the authority in charge of the arrest fails to notify any judge of the apprehension or arrest. Section 20 also provides for penalties accorded to authorities who fail to deliver the suspect to a proper judicial authority within 3 days of arrest. Also, Section 22 provides for the penalties to authorities who violate the rights of the detainees, as mentioned in Section 21. The penalty is ten (10) years and one day to twelve (12) years of imprisonment.<sup>186</sup> Therefore, it prevents the authorities from abusing the power to arbitrarily detain a person. Authorities who are guilty of using torture or coercive means during investigation and interrogation are given longer sentences: twelve (12) years and one day to twenty (20) years of imprisonment.<sup>187</sup>

## 6.2. Answering the Criticisms against the HSA

The previous chapter, part 5.2 discussed the criticisms against the HSA. These include: (1) the problem that the definition of terrorism in the HSA is too broad and may give space for including almost any violent act as terrorism; (2) the possibility that the HSA will be used in a abusive manner by the authorities; and (3) the concern that it may be used against people who oppose the government and brand them as a group that pursues terrorist aims. Let us take these criticisms one by one and assess the HSA if it does provide for these abuses.

---

<sup>186</sup> Ibid sections 18, 20 and 22

<sup>187</sup> Ibid section 25

### 6.2.1. The Definition of Terrorist Acts under the HSA

Sections 3 to 6 talk about what are regarded as offences by the HSA. Section 3 of the HSA regards the following acts, stated in the Philippines' revised penal code (or Act No. 3815),<sup>188</sup> republic acts<sup>189</sup> and presidential decrees<sup>190</sup>, as terrorism:

- piracy in general and mutiny in the high seas or in the Philippine Waters;
- rebellion or insurrection;
- coup d'état, including acts committed by private persons;
- murder;
- kidnapping and serious illegal detention;
- crimes involving destruction;
- arson;
- hijacking;
- piracy and highway robbery;
- illegal and unlawful possession, manufacturing, dealing in, acquisition or disposition of firearms, ammunitions or explosives;
- acts considered as offences in the Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990; and
- Atomic Energy Regulatory and Liability Act of 1968.<sup>191</sup>

Some of the actions included in Section 3 of the HSA are those considered as offences in the international terrorism conventions. Five out of the twelve acts fall under several international conventions. Referring to the list above, the first falls under the 1988 Vienna Convention, which is the convention that pertains to the prohibition of endangering

---

<sup>188</sup> The Revised Penal Code gives a list of what is considered to be criminal acts in the Philippines. This penal code was inherited from the Spaniards during their colonization of the Philippines until 1989 and has gone through several revisions

<sup>189</sup> Republic acts are laws that has been passed, either by the Senate or the House of Representatives, and vetoed by the president

<sup>190</sup> Presidential decrees are laws that were legislated during the martial law regime under Ferdinand Marcos from 1972-1986

<sup>191</sup> Ibid section 3

a maritime vessel. Kidnapping and serious illegal detention falls under the 1979 Hostages Convention. And if the affected person is UN personnel, it may fall under the 1994 UN personnel Convention. Hijacking falls under the 1970 Hague Convention. Illegal and unlawful possession, manufacturing, dealing in, acquisition or disposition of firearms, ammunitions or explosives is an offense considered under the 1991 Montreal Convention.

The other seven offenses do not fall under any of the eleven international terrorism conventions, but, are considered terrorism by Philippine law. Including these other seven criminal acts does not mean that the HSA is in violation of international law. First is that that there is no general consensus as to what encompasses terrorism. Like what has been mentioned in chapter 2, though several conventions have been written to address terrorism, it does not mean that these conventions provide what encompasses a terrorist crime. They only address acts that are commonly referred to as an act of terrorism. Recently the UN General Assembly's Ad Hoc Committee (AHC) on Measures to Eliminate International Terrorism concluded its 14th Session on 16 April 2010 without reaching agreement on the draft Comprehensive Convention on International Terrorism (CCIT) and what the scope of terrorism will be.<sup>192</sup> To further strengthen the claim that the HSA is not in violation of international law, the other seven acts considered as a terrorist crime (including those that are in line with international terrorism conventions) should have the intent to sow and create “a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand.”<sup>193</sup> This part illustrates something similar to what was mentioned in the UN Security Council Resolution 1566 stating that any act “with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act” must be prevented and should be punished by law.<sup>194</sup> Therefore it is necessary that the criminal act mentioned in the HSA should be coupled with the intent to sow fear and coerce the government to yield to the terrorists’ illegal demands.

---

<sup>192</sup> Eye on the UN (2010)

<sup>193</sup> HSA of 2007 section 3

<sup>194</sup> UNSC Resolution 1566 para. 3

In addition, the criticisms given by members of civil society said that the HSA's definition of terrorism is vague and too broad. However, in my opinion, these are fast assumptions and conclusion. The HSA specifically lists down the offences to be regarded as terrorism. It does not also lack the definition or the description of the said crimes. The crimes listed are acts already considered as a crime under Philippine law. However, in the same section, these acts can only be considered as a terrorist act only if they instill "widespread and extraordinary fear" and are coercing the government to surrender to "unlawful demands." This part of the provision makes the definition a bit unclear and giving it a broad facade. But looking at it closer, found guilty only if he actually committed the crime with the intent of instilling "widespread and extraordinary fear and coercing the government to give in to "unlawful demands." While not drawing a bright line that distinctly demarks which acts are punishable, the HSA requires the judiciary to determine when the requisite intent and attendant circumstances exist to make the violative act a punishable act of terrorism.<sup>195</sup> Moreover, the HSA, recognizing crimes that come with the intent of instilling "widespread and extraordinary fear and coercing the government to give in to "unlawful demands" is in conformity to the UN Security Council Resolution 1566, as mentioned in the previous paragraph.

#### 6.2.2. The Possibility of Abuse through the HSA

The HSA is perceived by critics as an instrument of the government to exploit its provisions. As what has been discussed in Section 5.2. of this paper, by looking solely at the titles of each section, it can be assumed that the HSA gives more power to the authorities and permits abuses. These include Section 18 (period of detention without warrant of arrest), Sections 7 and 8 (wiretapping) and Section 27 and 28 (investigation of bank accounts). These sections can be perceived as permitting abuses due to its very nature of permitting the intrusion to privacy of an individual and for arbitrary arrest. As mentioned previously, these intrusions or rather limitations of certain rights have corresponding

---

<sup>195</sup> Lyew (2010) pg. 197



safeguards in order not to permit misuse of the provisions of the law. It allows for a judge to check and balance military authorities or the police regarding their actions of arrest and the reason for further investigation of wiretapping and investigation of bank accounts. Moreover the presumption that it will be used in an abusive is not a valid reason to call either unconstitutional or unacceptable according to international law. As explained by Lyew (2010):

*In the 2006 case of Randolph David v. Pres. Gloria Macapagal-Arroyo, the Philippine Supreme Court held '[t]he validity of a statute or ordinance is to be determined from its general purpose and its efficiency to accomplish the end desired.' The Court concluded 'courts are not at liberty to declare statutes invalid although they may be abused in the manner of application.'*

Basically, mere allegations of abuse cannot be a valid to declare the HSA an instrument to be misused by authorities. Abuses should manifest in the application of the law. Then and there, it is more possible to see if the law is an instrument for abuse by authorities.

#### 6.2.3. The Concern of using the HSA to brand Opposition Members as Terrorists

Due to concerns over the broad definition of terrorism under the HSA come the worries that an abusive government shall use the HSA to brand those opposing the government as terrorists. It can be said that the HSA is not an instrument to brand people as terrorists. A person can only be called a terrorist if he or she has done one of the acts listed in Section 3 of the HSA (especially if it is one of the acts included in the 12 international terrorism conventions) and has the intent to sow “widespread and extraordinary fear” and is coercing the government to surrender to “unlawful demands.” As long as a person does not have the intention as mentioned in HSA, Section 3, he or she cannot be considered a terrorist. However, it says in one critique that:

*“Under this law EDSA I and II are terrorist acts because both may be deemed by government as acts of rebellion or insurrection considering the combination of civilian and military leaders leading a huge peoples rally in EDSA, withdrawing support from the President and demanding that an abusive Chief Executive who has lost the support of the people relinquish executive power. [...] Because the law is so vague and broad, nationwide protests such as general strikes may be deemed terrorist acts if they forwarded an unlawful demand [ex: the President step down] and the nationwide protest caused ‘extraordinary fear and panic’ [among the members and allies of the first family for example]. What is considered an ordinary slogan in rallies is punishable with life imprisonment under the [HSA].”<sup>196</sup>*

However in this critique, it forgot that to pass for a crime of terrorism the “extraordinary fear” should be “widespread.” Using the example of “members and allies of the first family” does not constitute as widespread. The fear or panic or damage of a certain act should be massive that it will affect society as a whole and not only a few number of people belonging to one family. Also in the last sentence where it said that “an ordinary slogan” may be punishable under the HSA is a hasty assumption. Since the legislation of the HSA in 2007, there have been massive rallies in the Philippines. An example of this is the transport strike by jeepney drivers wherein they refuse to drive their jeepneys and render transportation service to the people. This may instill panic among the commuters and demand from the government, i.e. increase the minimum fare. And through researching, no jeepney driver has been convicted of engaging in a terrorist act simply by refusing to drive his jeepney. Moreover, the demands of the jeepney driver are not unlawful. The drivers are not coercing the government through harmful means. Therefore, criticisms of perceiving the HSA as a tool for branding opposition as terrorists are jumping to hasty conclusions and there is no evidence to this by now.

---

<sup>196</sup> Colmenares (2007) pg. 2

### 6.3. Are there other criticisms of the HSA?

Overall the HSA on its façade is not in violation of any international human right law. It is proven necessary to address the problems of terrorism where previous efforts have not been successful. Though the HSA limits some human rights, it does not necessarily mean that it is in violation of international human rights law. The measures that limit these rights are necessary and are proportional to the aim of the HSA. The measures do not exclude the rights but rather limit it wherein the limitations have been proven necessary and proportional. And with limitations on the rights comes procedures that provide for a check and balance of a judicial authority on the actions of the police or the military. The HSA can serve as a safeguard against the abuses that may be done by the police or military and serves as instrument for promoting human rights by protecting it from terrorism. Violations of these safeguards by the authorities have corresponding penalties.

However, the HSA still has several negative impacts. First is that if it wrongly implemented. For example, if the wiretapping activities do not follow the provisions of the HSA, it may be an abuse of the right to privacy of an individual. As mentioned in ICCPR General Comment 16, paragraph 4 that “[a] decision to make use of such authorized interference must be made only by the authority designated under the law [...]” If an authority proceeds without following what has been written in the HSA, it could constitute a violation the HSA itself and of international law. Also with the allegations of the abusive practice of the military and the police and the massive corruption within the bureaucracy, the HSA will obviously serve as the main tool of abuse for the authorities.

Second is that the HSA, though the intentions are positive, may lessen the chances of continuous peace process with the Muslim secessionists. All rebel groups are terrorist organizations under Section 3 and Section 17 of the law. As a matter of policy, the Arroyo government has declared that it will not negotiate with “terrorists”. More than that, by branding these groups ‘terrorists’ the government has effectively driven these groups from the peace talks since no rebel group will be willing to negotiate with a government that has

labeled them as terrorists.<sup>197</sup> This means that the HSA may impede further developments in the negotiations with the Muslim secessionists. The MNLF has resorted to peace processes and negotiations. But by branding them as terrorists and prohibiting negotiations with them will further damage what previous presidents have already started. The Muslim rebel groups would lose efficacy and trust in the government which may lead to violent retaliations. It may also lead to further distrust that the government is willing to respond to the needs of the Muslim population.

And the last loophole that can be seen is the warrantless arrest. Though there are safeguards to this, i.e. bringing the offender to a judge within 3 days from the time of detention, it cannot be assured that the arrest would be based solely on proper investigations. An authority would still be able to abuse this power. Within the interval of the time of arrest and presenting the offender before the judge, other form of torture or coercing the person to admit the crime can still manifest. And with the Philippines' long track record of corruption within the bureaucracy, it may be unlikely that the procedures provided for in the HSA would serve its purpose of safeguarding the rights of offenders.

## **7. Conclusion**

Acts of terrorism have been a concern of states and have affected several aspects of society throughout the centuries. Therefore, the international community responded with several conventions to address specific types of terrorist crimes. With this comes the obligation of states to adhere to what has been provided for in the conventions and the general consensus among states to combat terrorism. The Philippines, as an independent state is also obliged to combat terrorism within its territory. After decades of dealing with terrorist groups, usually the Muslim rebels, the Philippines responded with several kinds of approaches: peace processes, armed combat and the passing of an anti-terrorism law.

---

<sup>197</sup> Ibid

In legislating and implementing a counter terrorism law, there are certain standards or guidelines that states should follow. First is that counterterrorist measures seeking to limit rights must be necessary. Second is that even while countering terrorism, states should not neglect their obligations to promote and protect human rights. Third is that the restriction on rights or freedoms by a counter terrorism measure should have a limitation. And fourth is that counter terrorism measures seeking to limit rights must be proportional.

And looking at the HSA based on these set of criteria, it is in accordance with international law. It has provided for safeguards in cases that it wants to limit certain rights. When it comes to obligations for countering terrorism, the HSA can be a vital instrument for strengthening the Philippines fight against terrorism. It has pointed out which kinds of activities are regarded as terrorism. These acts considered as terrorism in the HSA are mostly acts of terrorism considered in international terrorism conventions. It has also affirmed its obligations under UN General Assembly and Security Council resolutions. It did not fail to include human rights elements into the legislation, such as the rights of the detainees. It has also integrated due process in order to proceed with investigation methods that are seen as something that would impede the rights of people. The HSA also provides explicit duties for and punishments on government officials, which limit the law from being used in an overly oppressive manner. Before enactment of the HSA, aside from the peace talks, the military was the government's main tool to eradicate terrorism. Unlike the military, which had few checks on its decision-making outside the chain-of-command, the HSA empowers police through a limited grant of power.<sup>198</sup> Therefore, the HSA serves as an instrument to further prevent abuse of the military in handling investigations related to terrorism. Permits from judicial authorities provide a check and balance between different government entities. Overall, every law will be effective and in line with international standards only if it is being or has been implemented properly and the whole check and balance system is fully efficient and free from corruption.

---

<sup>198</sup> Lyew (2010) pg. 208

And with the Philippine experience, there are other options for the government to address terrorism. First is to address the root cause of the problem by looking into the background of insurgency in Muslim Mindanao. The rebellion can be attributed to several things. One is the poverty experienced by the Filipino Muslims. Another one is the feeling of being set apart from the central government. And another thing is the impression that the government is not responding to the needs and demands of the Muslim population. Thus, the government should be able to apply more concrete measures to address root problems. Concrete measures mean that there should be continuity of policies regardless which administration is in control, especially if it affects national security. Second is to allow for control and more information on how the military and police deal with terrorists. The provision for checks and balance of the personnel's actions are not only applicable for terrorists. It is something overarching on all sorts of crime. If the incompetency of the authorities is the reason for what has been provided in the HSA, a more encompassing safeguard for all offenders could benefit the Philippine Government in terms of reaffirming its international human rights obligations. This also comes with improving the judicial system and the cooperation and coordination of the military and the civilian government.

All in all, the HSA's provisions do not violate any international law. However, the application of the law is vital in order to prove that the HSA is not an instrument for abuse of the government. It should be applied in such a way that it will not violate any kind of right. Though the HSA has been proven necessary to combat terrorism in the Philippines, there are still other available options for the government and should at least use the measures provided for in the HSA at moderation.

## References

- Abinales, Patricio N. *From the margins; the end of an experiment*. Mindal News, 18 July 2006.  
[http://mindanews.com/index.php?option=com\\_content&task=blogcategory&id=48&Itemid=117](http://mindanews.com/index.php?option=com_content&task=blogcategory&id=48&Itemid=117), (Sited 15.03.2010)
- Abrams, Norman. *Developments in US Anti-Terrorism Laws: Checks and Balances Undermined*. In: Journal of International Criminal Justice, 4(5), 2006. Pg. 1117 – 1136 [www.jicj.oxfordjournals.org/cgi/reprint/mql080v1](http://www.jicj.oxfordjournals.org/cgi/reprint/mql080v1) (sited 02.11.2009)
- Acharya, Amitav and Acharya, Arabinda. *The Myth of the Second Front: Localizing the 'War on Terror' in Southeast Asia*. In: The Washington Quarterly, 30(4), 2007. Pp. 75-90 <http://dx.doi.org/10.1162/wash.2007.30.4.75> (10.03.2010)
- Acop, Rolando LtCol, PAF. *An Assessment of the RP-U.S. Cooperation on Counterterrorism in the Philippines*. Master's Thesis, Maxwell Air Force Base, Alabama, 2008. Pp. 1-32 (Sited 15.03.2010)
- Albano, Noel and Tubianosa, Diony. *House passes anti-terrorism bill on 3rd and final reading*. House of Representatives press release, 2006  
[www.congress.gov.ph/press/details.php?pressid=1200](http://www.congress.gov.ph/press/details.php?pressid=1200) (Sited 15.03.2010)
- BBC News. *Philippines Approve Terror Bill*. BBC News, 2007.  
<http://news.bbc.co.uk/2/hi/asia-pacific/6374875.stm> (Sited 27.04.2010)
- Bartel, Jeremy and Nayve, Moises Jr. *The Rajah Solaiman Islamic Movement (RSIM) and the Rise of Radical Islamic Converts in The Philippines: A Major Security Concern*. Master's thesis, Naval Postgraduate School, Monterey, CA. 2008. Pp. 1-79 (sited on 10.03.2010)
- Berrigan, Frida and Hartung, William. *US Weapons at War 2005: Promoting Freedom or Fueling Conflict? US Military Aid and Arms Transfers Since September 11*. A World Policy Institute Special Report, World Policy Institute, USA, 2005.  
<http://www.worldpolicy.org/projects/arms/reports/wawjune2005.html> (Sited 15.03.2010)
- Bianchi, Andrea and Keller, Alexis (eds.). *Counterterrorism: Democracy's Challenge*. Portland, Oregon, USA (Hart Publishing) 2008.
- Blakesley, Christopher. *Terrorism and Anti-Terrorism: A Normative Practical Assessment*. New York, USA (Transnational Publishers, Inc.) 2006.
- Benedek, Wolfgang and Yotopoulos-Marangopoulos, Alice (eds.). *Anti-Terrorist Measures and Human Rights*. Leiden, the Netherlands (Martinoff Nijhoff Publishers) 2004.

Brown, Lesley and Wilson, Paul. *Putting the Crime Back into Terrorism: The Philippines Perspective*. In: Asian Criminology, Vol. 2, 2007. Pp. 35-46 [www.springerlink.com/index/062hj242336q1421.pdf](http://www.springerlink.com/index/062hj242336q1421.pdf) (Sited 10.03.2010)

Brysk Alison and Shafir, Gershon (eds.). *National Insecurity and Human Rights: Democracies Debate Counterterrorism*. Los Angeles, California, USA (University of California Press) 2007.

Cauley, Jon and Im, Erick Iksoon. *Intervention Policy Analysis of Skyjackings and Other Terrorist Incidents*. In: The American Economic Review, Vol. 78, No. 2, Papers and Proceedings of the One- Hundredth Annual Meeting of the American Economic Association, May, 1988. Pg. 27-31 <http://www.jstor.org/stable/1818092> (sited 26.10.2009)

Center for Nonproliferation Studies. *International Convention for the Suppression of the Financing of Terrorism*. Center for Nonproliferation Studies, Monterey, USA, 2009. [http://www.nti.org/e\\_research/official\\_docs/inventory/pdfs/finterr.pdf](http://www.nti.org/e_research/official_docs/inventory/pdfs/finterr.pdf) (sited 30.11.2009), pg. 1-3

Chaliand, Gerard and Blin, Arnaud (eds.). *The History of Terrorism: From Antiquity to Al Qaeda*. Los Angeles, California (University of California Press) 2007.

Chareudin, Asep. *Countering Transnational Terrorism in Southeast Asia with Respect to Terrorism in Indonesia and the Philippines*. Master's thesis, Naval Postgraduate School, Monterey, CA, 2003. Pg. 1-80

Choi, Jihoon. *Southern Philippines and the Policy of the Second Front in the Global War on Terrorism*. Master's thesis, Naval Postgraduate School, Monterey, CA. 2009. Pp. 1-93 <http://handle.dtic.mil/100.2/ADA509157> (sited on 10.03.2010)

Cole, David. *The New McCarthyism: Repeating History in the War on Terrorism*. In: Harvard Civil Rights-Civil Liberties Law Review, 34, 2003. Pp. 1-30 [http://www.law.harvard.edu/students/orgs/crcl/vol38\\_1/cole.pdf](http://www.law.harvard.edu/students/orgs/crcl/vol38_1/cole.pdf) (Sited 15.03.2010)

Colmenares, Neri Javier. *Outline of Critique of the Anti-Terrorism Law Known as the Human Security Act of 2007*. Counsel for the Defense of Liberties, Quezon City, Philippines, 2007. [www.bayan.ph/downloads/codal%20critique%20of%20the%20Antiterrorism%20law.pdf](http://www.bayan.ph/downloads/codal%20critique%20of%20the%20Antiterrorism%20law.pdf) (Sited 29.04.2010)

Conde, Carlos. *Corruption troubles Phillipine military*. International Herald Tribune, 2005 [www.ihl.com/articles/2005/05/25/news/phils.php](http://www.ihl.com/articles/2005/05/25/news/phils.php) (Sited 15.03.2010)

Conte, Alex. *Handbook on Human Rights Compliance While Countering Terrorism*. Center on Global Counterterrorism Cooperation, 2008 [http://www.globalct.org/images/content/pdf/reports/human\\_rights\\_handbook.pdf](http://www.globalct.org/images/content/pdf/reports/human_rights_handbook.pdf) (Sited 10.03.2010)

Cortright, David. *Friend not Foe: Civil Society and the Struggle against Violent Extremism*. A report to Cordaid from the Fourth Freedom Forum and Kroc Institute for International Peace Studies at the University of Notre Dame, 2008 [http://www.fourthfreedom.org/pdf/08\\_10\\_Friend\\_Not\\_Foe.pdf](http://www.fourthfreedom.org/pdf/08_10_Friend_Not_Foe.pdf) (Sited 10.03.2010)

CPP Information Bureau. *Kasaysayan ng Bagong Hukbong Bayan*. <http://www.philippinerevolution.net/npa/kas1.shtml> (Sited 20.10.2009)



Dale, Stephen Frederic. *Religious Suicide in Islamic Asia: Anticolonial Terrorism in India, Indonesia, and the Philippines*. In: *Journal of Conflict Resolution* 32, 1988. Pp. 37-59 <http://jcr.sagepub.com/cgi/content/abstract/32/1/37> (sited on 10.03.2010)

De Guzman, Orlando. *The Philippine's MILF Rebels*. In: BBC News, 6 May 2003. <http://news.bbc.co.uk/2/hi/asia-pacific/3003809.stm> (Sited 20.10.2009)

Desker, Barry and Ramakrishna, Kumar. *Forging an Indirect Strategy in Southeast Asia*. In: *The Washington Quarterly* 25(2), 2002. Pp. 161-176 [www.informaworld.com/smpp/.../content~db=all~content=a918390282](http://www.informaworld.com/smpp/.../content~db=all~content=a918390282) (Sited 25.04.2010)

Diokno, Jose Manuel. *FAQs on the Human Security Act*. In: *Philippine Inquirer*, 15 July 2007. [http://opinion.inquirer.net/inquireropinion/talkofthetown/view/20070715-76703/FAQs\\_on\\_the\\_Human\\_Security\\_Act](http://opinion.inquirer.net/inquireropinion/talkofthetown/view/20070715-76703/FAQs_on_the_Human_Security_Act) (Sited 13.10.2009)

Dollaga, Norma. *Why Arroyo Needs Anti-Terror Law*. In: *The Philippine Inquirer*, 03 March 2007. [http://opinion.inquirer.net/inquireropinion/letterstotheeditor/view/20070306-53077/Why\\_Arroyo\\_needs\\_anti-terror\\_law](http://opinion.inquirer.net/inquireropinion/letterstotheeditor/view/20070306-53077/Why_Arroyo_needs_anti-terror_law) (Sited 21.10.2009)

Donnelly, Charles. *Terrorism in the Southern Philippines: Contextualising the Abu Sayyaf Group as an Islamist Secessionist Organisation*. 15th Biennial Conference of the Asian Studies Association of Australia in Canberra 29 June-2 July 2004 <http://coombs.anu.edu.au/SpecialProj/ASAA/biennial-conference/2004/Donnelly-C-ASAA2004.pdf> (Sited 10.03.2010)

Duffy, Helen. *The 'War on Terror' and the Framework of International Law*. New York (Cambridge University Press) 2005

Eldridge, Philip. *Emerging Roles of National Human Rights Institutions in Southeast Asia*. In: *Global Change, Peace & Security* 14(3), 2002. Pp. 206-226 <http://dx.doi.org/10.1080/1323910022000023129> (Sited 15.03.2010)

Eriksson, Mikael, Wallensteen, Peter, and Sollenberg, Margareta. *Armed Conflict, 1989-2002*. In: *Journal of Peace Research*. Vol. 40, no. 5 (2003). Pg. 593-607 <http://www.jstor.org/stable/3648363> (sited 30.09.2009)

Eye on the UN. *There is no UN definition of terrorism*. Eye on the UN, Hudson Institute, New York, 2010 <http://www.eyeontheun.org/facts.asp?1=1&p=61> (Sited 29.04.2010)

Filler, Alfredo. *The Abu Sayyaf Group: A Growing Menace to Civil Society*. In: *Terrorism and Political Violence*, 14(4), 2002. Pp. 131-162 <http://dx.doi.org/10.1080/714005638> (Sited 10.03.2010)

Gonzales, Stella. *Philippines: Anti-terror Law Enforced Amid Protests*. 16 July 2007. <http://ipsnews.net/news.asp?idnews=38547> (Sited 02.11.2009)

Griset, Pamela and Mahan, Sue. *Terrorism in Perspective*. London, United Kingdom (Sage Publications, Inc.) 2003.

Head, Michael. *Counter Terrorism Laws: A Threat to Political Freedom, Civil Liberties and Constitutional Rights*. In: *Melbourne University Law Review*, 26, 2002. <http://www.austlii.edu.au/au/journals/MULR/2002/34.html#fn81> (sited 02.11.2009)

Himagsik Kayumanggi. *Jamby Madrigal Attacks Arroyo State Terrorism and U.S. Imperialism*. Interview with Senator Jamby Madrigal, 9 October 2006 <http://sonnysj.blogspot.com/2007/07/jamby-madrigal-attacks-arroyo-state.html> (Sited 25.04.2010)

Human Rights Watch. *"You Can Die Any Time" Death Squad Killings in Mindanao*. Human Rights Watch, USA, 2009. <http://www.hrw.org/en/reports/2009/04/06/you-can-die-any-time> (Sited 15.03.2010)

Ignatieff, Michael. *The Lesser Evil: Political Ethics in an Age of Terror*. Edinburgh (Edinburgh University Press Ltd.) 2004.

Ilagan, Aris et. Al. *Valentine's Day blast kill 12*. In: Manila Bulletin, 15 February 2005. <http://www.mb.com.ph/node/112760> (Sited 20.10.2009)

International Center for Political Violence and Terrorism Research. *Monthly Country Report, Philippines, September 2009*. Singapore, Singapore, 2009. <http://www.pvtr.org/pdf/Monthly%20Reports/Philippines-September09.pdf> (Sited 30.09.2009)

International Crisis Group (ICG). *Southern Philippines Backgrounder: Terrorism and the Peace Process*. (Report No. 80) International Crisis Group, Singapore/Brussels, 2004. [www.crisisgroup.org/home/index.cfm?id=2863&1=1](http://www.crisisgroup.org/home/index.cfm?id=2863&1=1) (Sited 15.03.2010)

International Crisis Group (ICG). *The Philippines: Counter-Insurgency Vs. Counter-Terrorism in Mindanao*. (Report No. 152) International Crisis Group, Singapore/Brussels, 2008. [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/philippines/152\\_counterinsurgency\\_vs\\_counter\\_terrorism\\_in\\_mindanao.ashx](http://www.crisisgroup.org/~media/Files/asia/south-east-asia/philippines/152_counterinsurgency_vs_counter_terrorism_in_mindanao.ashx) (Sited 15.03.2010)

Klein, Pierre. *International Convention for the Suppression of Terrorist Bombings*. United Nations Audio Visual Library of International Law, 2009.

[http://untreaty.un.org/cod/avl/pdf/ha/icstb/icstb\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/icstb/icstb_e.pdf) (sited 30.11.2009), pg. 1-4

Landes, William. *An Economic Study of U.S. Aircraft Hijackings, 1960-1976*. Journal of Law and Economics 21, 1978. Pp. 1-31 [www.nber.org/papers/w0210.pdf](http://www.nber.org/papers/w0210.pdf) (26.10.2009)

Laqueur, Walter. *The Age of Terrorism*. Boston (Little, Brown and Company) 1987.

Lara, Francisco Jr. and Champain, Phil. *Inclusive Peace in Muslim Mindanao: Revisiting the Dynamics of Conflict and Exclusion*. International Alert, London, UK, 2009. [www.international-alert.org/pdf/Inclusive\\_Peace\\_in\\_Muslim\\_Mindanao\\_Revisiting\\_the\\_Dynamics\\_of\\_Conflict\\_and\\_Exclusion.pdf](http://www.international-alert.org/pdf/Inclusive_Peace_in_Muslim_Mindanao_Revisiting_the_Dynamics_of_Conflict_and_Exclusion.pdf) (Sited 03.05.2010)

Lum, Cynthia, Kennedy, Leslie and Sherley, Allison. *Are counter-terrorism strategies effective? The results of the Campbell systematic review on counter-terrorism evaluation research*. In: Journal of Experimental Criminology, 2006. Pg. 489-516

Lyew, Brent. *An Examination of the Philippines' Anti-Terror Law*. In: Pacific Rim Law and Policy Journal, Vol. 19, 2010. Pp. 187-216

Manalo, Eusaquito. *The Philippine Response to Terrorism: The Abu Sayyaf Group*. Master's thesis, Naval Postgraduate School, Monterey, CA, 2004. Pg. 1-94 [www.fas.org/irp/world/para/manalo.pdf](http://www.fas.org/irp/world/para/manalo.pdf) (Sited 10.03.2010)

Manyin, Mark. *Terrorism in Southeast Asia*. Congressional Report for Congress, Congressional Report Services, Library of Congress, Washington DC, 2003 [www.fas.org/sgp/crs/terror/RL34194.pdf](http://www.fas.org/sgp/crs/terror/RL34194.pdf) (Sited 10.03.2010)

National Statistical Coordination Board. *Metro Manila Congested at 18,650 Persons Per Square Kilometer in 2007* (Report No. FS-200806-SS1-01). National Statistical Coordination Board, Makati City, Philippines, 2008. <http://www.nscb.gov.ph/factsheet/pdf08/FS-200806-SS1-01.asp> (Sited 19.10.2009)

Niksich, Larry. *Abu Sayyaf: Target of Philippine-U.S. Anti-Terrorism Cooperation*. Congressional Report for Congress, Congressional Report Services, Library of Congress, Washington DC, 2007. [www.fas.org/sgp/crs/terror/RL31265.pdf](http://www.fas.org/sgp/crs/terror/RL31265.pdf) (Sited 10.03.2010)

Noriyuki Katagiri. *Communist Party of Philippines/New People's Army (CPP/NPA)*. Center for Defense Information, Washington DC, 2002. [http://www.cdi.org/program/document.cfm?documentid=1136&programID=39&from\\_page=../friendlyversion/printversion.cfm](http://www.cdi.org/program/document.cfm?documentid=1136&programID=39&from_page=../friendlyversion/printversion.cfm) (Sited 20.10.2009)

Office of the Judge Advocate General, AFP. *Dagdag kaalaman: Role of the Armed Forces at these trying times*. 2006 <http://www.afp.mil.ph/articles/kaalaman.ph> (Sited 15.03.2010)

Ramraj, Victor, Hor, Michael and Roach, Kent (eds.). *Global Anti-Terrorism Law and Policy*. Cambridge, UK (Cambridge University Press) 2005.

Refugee Review Tribunal. *RRT Research Response*. (Research Response Number PHL31622) Refugee Review Tribunal, Australia, 2007. [www.mrt-rrt.gov.au/ArticleDocuments/102/phl31622.pdf.aspx](http://www.mrt-rrt.gov.au/ArticleDocuments/102/phl31622.pdf.aspx) (Sited 14.10.2009)

Rogers, Steven. *Beyond the Abu Sayyaf: The Lessons of Failure in the Philippines*. In: Foreign Affairs 83(1), 2004.Pp. 16-20 <http://heinonline.org/> (Sited 16.04.2010)

Sales, Peter. *State terror in the Philippines: the Alston Report, human rights and counter-insurgency under the Arroyo administration*. In: Contemporary Politics, 15 (30), 2009. Pp. 321-336 <http://dx.doi.org/10.1080/13569770903118788> (Sited 15.03.2010)

Saul, Ben. *Defining Terrorism in International Law*. New York, USA (Oxford University Press Inc.) 2006.

Seachon, Art Ryan. *Insurgents in History. A Blueprint for Future Strategies*. In: OG5 Digest October-December, 2004. [http://www.army.mil.ph/OG5\\_articles/Insegencies.htm](http://www.army.mil.ph/OG5_articles/Insegencies.htm) (Sited 21.10.2009) pg. 16

Senate of the Philippines Press. *Pimentel Launches Book on How Human Security Act was Crafted by the Senate*. Senate of the Philippines Press, 2007. [http://www.senate.gov.ph/press\\_release/2007/0501\\_pimentel1.asp](http://www.senate.gov.ph/press_release/2007/0501_pimentel1.asp) (Sited 28.04.2010)

UN Committee against Torture. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION: Concluding observations of the Committee against Torture.

(CAT/C/PHL/CO.2), 14 May 2009. Retrieved from the Office of the High Commissioner for Human Rights website:  
<http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.PHL.CO.2.pdf> (Sited 02.11.2009)

Uprising. *The Human Security Act of 2007*. In: Uprising, 2007.  
<http://uprisingradio.org/home/?p=1687> (Sited 2.04.2010)

Victoria, Rodrigo. *PA, PNP, Biliran province finalize agreement on ISO*. Philippine Information Agency, 2008.  
<http://mail.pia.gov.ph/default.asp?m=12&sec=reader&rp=10&fi=p081124.htm&no=93&date=> (Sited 28.04.2010)

Wilson, Paul. *The Philippines - three decades of terrorism*. Humanities & Social Sciences papers, 2005. [http://epublications.bond.edu.au/hss\\_pubs/29](http://epublications.bond.edu.au/hss_pubs/29) (Sited 10.03.2010)

Wilson, Richard Ashby (ed). *Human Rights in the 'War on Terror.'* New York, USA (Cambridge University Press) 2005.

## Laws

The Revised Penal Code	Act No. 3815, An Act Revising the Penal Code and Other Penal Codes, 8 December 1930
1985 Rules of Criminal Procedure	1985 Rules of Criminal Procedure, As Amended per Resolutions Adopted by the Supreme Court on June 17, 1988 and July 7, 1989
The 1987 Philippine Constitution	1987 Constitution of the Republic of the Philippines, 2 February 1987
Anti-Money Laundering Act of 2001	Republic Act 9160: An Defining the Crime of Money Laundering, Providing Penalties Therefor and For Other Purposes. Twelfth Congress of the Republic of the Philippines, 29 September 2001
HSA of 2007	Republic Act 9372: An act to Secure the State and Protect our People from Terrorism. Thirteenth Congress of the Republic of the Philippines, 08 February 2007.

## Conventions, Resolutions and General Comments

CCPR	International Covenant on Civil and Political Rights, New York, 16 December 1966
1963 Tokyo Convention	Convention on Offences and Certain Other Acts Committed On Board Aircraft , Tokyo, 14 September 1963
1970 Hague Convention	Convention for the Suppression of Unlawful Seizure of Aircraft, the Hague, 16 December 1970
1971 OAS	1971 OAS Convention to Prevent and Punish Acts of Terrorism

Convention	Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, Washington, DC, 2 February 1971
1971 Montreal Convention	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 23 September 1971
1973 Protected Persons Convention	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 14 December 1973
1979 Hostages Convention	International Convention against the Taking of Hostages, New York, 18 December 1979
1980 Vienna Convention	The Convention on the Physical Protection of Nuclear Material, Vienna, May 1980
1987 SAARC Convention	SAARC Regional Convention on suppression of Terrorism, Kathmandu, 4 December 1987
1988 Rome Convention	Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome, 10 March 1988
1994 UN Personnel Convention	Convention on the Safety of United Nations and Associated Personnel, New York, 9 December 1994
1977 European Convention	1977 European Convention on the Suppression of Terrorism, Strasbourg, 27 January 1977
1997 Terrorist Bombing Convention	International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997
1998 Arab League Convention	The Arab Convention For The Suppression Of Terrorism, Cairo, 22 April 1998
1999 CIS Treaty	Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism, Minsk, 4 June 1999
1999 OAU Convention	OAU Convention on the Prevention and Combating of Terrorism, Algiers, 14 June 1999
1999 OIC Convention	OIC Convention to Combat Terrorism, 1 July 1999
1999 Financing of Terrorism Convention	International Convention for the Suppression of the Financing of Terrorism, New York, 09 December 1999
2002 Inter-American Convention	Inter-American Convention Against Terrorism, Barbados, 3 June 2002
Guidelines on Human Rights and the Fight against Terrorism	Guidelines on human rights and the fight against terrorism, Adopted by the Committee of Ministers at the 804th meeting of the Ministers' Deputies, 11 July 2002
2005 European Convention	Council of Europe Convention on the Prevention of Terrorism, Warsaw, 16 May 2005
2005 Nuclear Terrorism Convention	International Convention for the Suppression of Acts of Nuclear Terrorism, New York, 14 September 2005
UN General Assembly Res. 49/60	Measures to eliminate international terrorism, United Nations General Assembly Res. 49/60 of 9 December 1994

UN General Assembly resolution 57/219	Protection of human rights and fundamental freedoms while countering terrorism, General Assembly resolution 57/219 of 18 December 2002
Resolution 1373 (2001)	United Nations Security Council Res. 1373 (2001) of 28 September 2001
Commission on Human Rights resolution 2003/68	Protection of human rights and fundamental freedoms while countering terrorism, Commission on Human Rights resolution 2003/68 of 25 April 2003
Resolution 1269 (1999)	United Nations Security Council Resolution 1269 (S/RES/1269) of 19 October 1999
Resolution 1566 (2004)	Threats to international peace and security caused by terrorist acts, United Nations Security Council Resolution 1566 (2004) S/RES/1566 (2004) , 7 October 2004
CCPR General Comment 16	UN Human Rights Committee, CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988
CCPR General Comment 29	UN Human Rights Committee, CCPR General Comment No. 29: States of Emergency (CCPR/C/21/Rev.1/Add.11) , 31 August 2001
CCPR General Comment No. 7	UN Human Rights Committee, General Comment No. 07: Torture or cruel, inhuman or degrading treatment or punishment (Art. 7),30 May 1982

## Cases

Delgado Paez v. Columbia	Human Rights Committee, Communication No. 195/1985, 12 July 1990
Asencios Lindo, et. al., Case	Inter-American Commission on Human Rights, Report No. 49/00, Case 11.182, 13 April 2002
Kilic v. Turkey	European Commission on Human Rights, Application No. 22492/93, 23 October 1998
The Greek Case	European Commission on Human Rights (Application No. 3321/67, Denmark vs. Greece; No. 3322/67, Norway vs. Greece; No. 3323/67, Sweden vs. Greece; No. 3344 Netherlands vs. Greece) 1969

## **Annex**

### **ANNEX I**

#### **Republic Act No. 9372**

**March 6, 2007**

#### **AN ACT TO SECURE THE STATE AND PROTECT OUR PEOPLE FROM TERRORISM**

*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

**SECTION 1. *Short Title.*** - This Act shall henceforth be known as the "**Human Security Act of 2007.**"

**SEC. 2. *Declaration of Policy.*** - It is declared a policy of the State to protect life, liberty, and property from acts of terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the law of nations.

In the implementation of the policy stated above, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution.

The State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peace-building, addressing the roots of conflict by building state capacity and promoting equitable economic development.

Nothing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government. It is to be understood, however that the exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times.

**SEC. 3. *Terrorism.***- Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

- a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
- b. Article 134 (Rebellion or Insurrection);
- c. Article 134-a (Coup d' Etat), including acts committed by private persons;
- d. Article 248 (Murder);
- e. Article 267 (Kidnapping and Serious Illegal Detention);
- f. Article 324 (Crimes Involving Destruction), or under
  - 1. Presidential Decree No. 1613 (The Law on Arson);
  - 2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
  - 3. Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);
  - 4. Republic Act No. 6235 (Anti-Hijacking Law);
  - 5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
  - 6. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

**SEC. 4. *Conspiracy to Commit Terrorism.*** - Persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment.



There is conspiracy when two or more persons come to an agreement concerning the commission of the crime of terrorism as defined in Section 3 hereof and decide to commit the same.

**SEC. 5. *Accomplice.*** - Any person who, not being a principal under Article 17 of the Revised Penal Code or a conspirator as defined in Section 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts shall suffer the penalty of from seventeen (17) years, four months one day to twenty (20) years of imprisonment.

**SEC. 6. *Accessory.*** - Any person who, having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism, and without having participated therein, either as principal or accomplice under Articles 17 and 18 of the Revised Penal Code, takes part subsequent to its commission in any of the following manner: (a) by profiting himself or assisting the offender to profit by the effects of the crime; (b) by concealing or destroying the body of the crime, or the effects, or instruments thereof, in order to prevent its discovery; (c) by harboring, concealing, or assisting in the escape of the principal or conspirator of the crime, shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Notwithstanding the above paragraph, the penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of subparagraph (a).

**SEC. 7. *Surveillance of Suspects and Interception and Recording of Communications.*** - The provisions of Republic Act No. 4200 (Anti-Wire Tapping Law) to the contrary notwithstanding, a police or law enforcement official and the members of his team may, upon a written order of the Court of Appeals, listen to, intercept and record, with the use of any mode, form, kind or type of electronic or other surveillance equipment or intercepting and tracking devices, or with the use of any other suitable ways and means for that purpose,

any communication, message, conversation, discussion, or spoken or written words between members of a judicially declared and outlawed terrorist organization, association, or group of persons or of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism.

*Provided*, That surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized.

**SEC. 8. *Formal Application for Judicial Authorization.*** - The written order of the authorizing division of the Court of Appeals to track down, tap, listen to, intercept, and record communications, messages, conversations, discussions, or spoken or written words of any person suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall only be granted by the authorizing division of the Court of Appeals upon an ex parte written application of a police or of a law enforcement official who has been duly authorized in writing by the Anti-Terrorism Council created in Section 53 of this Act to file such ex parte application, and upon examination under oath or affirmation of the applicant and the witnesses he may produce to establish: (a) that there is probable cause to believe based on personal knowledge of facts or circumstances that the said crime of terrorism or conspiracy to commit terrorism has been committed, or is being committed, or is about to be committed; (b) that there is probable cause to believe based on personal knowledge of facts or circumstances that evidence, which is essential to the conviction of any charged or suspected person for, or to the solution or prevention of, any such crimes, will be obtained; and, (c) that there is no other effective means readily available for acquiring such evidence.

**SEC. 9. *Classification and Contents of the Order of the Court.*** - The written order granted by the authorizing division of the Court of Appeals as well as its order, if any, to extend or renew the same, the original application of the applicant, including his application to extend or renew, if any, and the written authorizations of the Anti-Terrorism Council shall be deemed and are hereby declared as classified information: *Provided*, That the person being surveilled or whose communications, letters, papers, messages, conversations,

discussions, spoken or written words and effects have been monitored, listened to, bugged or recorded by law enforcement authorities has the right to be informed of the acts done by the law enforcement authorities in the premises or to challenge, if he or she intends to do so, the legality of the interference before the Court of Appeals which issued the written order. The written order of the authorizing division of the Court of Appeals shall specify the following: (a) the identity, such as name and address, if known, of the charged or suspected person whose communications, messages, conversations, discussions, or spoken or written words are to be tracked down, tapped, listened to, intercepted, and recorded and, in the case of radio, electronic, or telephonic (whether wireless or otherwise) communications, messages, conversations, discussions, or spoken or written words, the electronic transmission systems or the telephone numbers to be tracked down, tapped, listened to, intercepted, and recorded and their locations or if the person suspected of the crime of terrorism or conspiracy to commit terrorism is not fully known, such person shall be subject to continuous surveillance provided there is a reasonable ground to do so; (b) the identity (name, address, and the police or law enforcement organization) of the police or of the law enforcement official, including the individual identity (names, addresses, and the police or law enforcement organization) of the members of his team, judicially authorized to track down, tap, listen to, intercept, and record the communications, messages, conversations, discussions, or spoken or written words; (c) the offense or offenses committed, or being committed, or sought to be prevented; and, (d) the length of time within which the authorization shall be used or carried out.

**SEC. 10. *Effective Period of Judicial Authorization.*** - Any authorization granted by the authorizing division of the Court of Appeals, pursuant to Section 9(d) of this Act, shall only be effective for the length of time specified in the written order of the authorizing division of the Court of Appeals, which shall not exceed a period of thirty (30) days from the date of receipt of the written order of the authorizing division of the Court of Appeals by the applicant police or law enforcement official.

The authorizing division of the Court of Appeals may extend or renew the said authorization for another non-extendible period, which shall not exceed thirty (30) days

from the expiration of the original period: Provided, That the authorizing division of the Court of Appeals is satisfied that such extension or renewal is in the public interest: and *Provided, further*, That the ex parte application for extension or renewal, which must be filed by the original applicant, has been duly authorized in writing by the Anti-Terrorism Council.

In case of death of the original applicant or in case he is physically disabled to file the application for extension or renewal, the one next in rank to the original applicant among the members of the team named in the original written order of the authorizing division of the Court of Appeals shall file the application for extension or renewal: Provided, That, without prejudice to the liability of the police or law enforcement personnel under Section 20 hereof, the applicant police or law enforcement official shall have thirty (30) days after the termination of the period granted by the Court of Appeals as provided in the preceding paragraphs within which to file the appropriate case before the Public Prosecutor's Office for any violation of this Act.

If no case is filed within the thirty (30)-day period, the applicant police or law enforcement official shall immediately notify the person subject of the surveillance, interception and recording of the termination of the said surveillance, interception and recording. The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the applicant police or law enforcement official who fails to notify the person subject of the surveillance, monitoring, interception and recording as specified above.

**SEC. 11. *Custody of Intercepted and Recorded Communications.*** - All tapes, discs, and recordings made pursuant to the authorization of the authorizing division of the Court of Appeals, including all excerpts and summaries thereof as well as all written notes or memoranda made in connection therewith, shall, within forty-eight (48) hours after the expiration of the period fixed in the written order of the authorizing division of the Court of Appeals or within forty-eight (48) hours after the expiration of any extension or renewal granted by the authorizing division of the Court of Appeals, be deposited with the

authorizing Division of the Court of Appeals in a sealed envelope or sealed package, as the case may be, and shall be accompanied by a joint affidavit of the applicant police or law enforcement official and the members of his team.

In case of death of the applicant or in case he is physically disabled to execute the required affidavit, the one next in rank to the applicant among the members of the team named in the written order of the authorizing division of the Court of Appeals shall execute with the members of the team that required affidavit.

It shall be unlawful for any person, police officer or any custodian of the tapes, discs and recording, and their excerpts and summaries, written notes or memoranda to copy in whatever form, to remove, delete, expunge, incinerate, shred or destroy in any manner the items enumerated above in whole or in part under any pretext whatsoever.

Any person who removes, deletes, expunges, incinerates, shreds or destroys the items enumerated above shall suffer a penalty of not less than six years and one day to twelve (12) years of imprisonment.

**SEC. 12. *Contents of Joint Affidavit.*** - The joint affidavit of the police or of the law enforcement official and the individual members of his team shall state: (a) the number of tapes, discs, and recordings that have been made, as well as the number of excerpts and summaries thereof and the number of written notes and memoranda, if any, made in connection therewith; (b) the dates and times covered by each of such tapes, discs, and recordings; (c) the number of tapes, discs, and recordings, as well as the number of excerpts and summaries thereof and the number of written notes and memoranda made in connection therewith that have been included in the deposit; and (d) the date of the original written authorization granted by the Anti-Terrorism Council to the applicant to file the ex parte application to conduct the tracking down, tapping, intercepting, and recording, as well as the date of any extension or renewal of the original written authority granted by the authorizing division of the Court of Appeals.

The joint affidavit shall also certify under oath that no duplicates or copies of the whole or any part of any of such tapes, discs, and recordings, and that no duplicates or copies of the whole or any part of any of such excerpts, summaries, written notes, and memoranda, have been made, or, if made, that all such duplicates and copies are included in the sealed envelope or sealed package, as the case may be, deposited with the authorizing division of the Court of Appeals.

It shall be unlawful for any person, police or law enforcement official to omit or exclude from the joint affidavit any item or portion thereof mentioned in this Section.

Any person, police or law enforcement officer who violates any of the acts prescribed in the preceding paragraph shall suffer the penalty of not less than ten (10) years and one day to twelve (12) years of imprisonment.

**SEC. 13. *Disposition of Deposited Material.*** -The sealed envelope or sealed package and the contents thereof, which are deposited with the authorizing division of the Court of Appeals, shall be deemed and are hereby declared classified information, and the sealed envelope or sealed package shall not be opened and its contents (including the tapes, discs, and recordings and all the excerpts and summaries thereof and the notes and memoranda made in connection therewith) shall not be divulged, revealed, read, replayed, or used as evidence unless authorized by written order of the authorizing division of the Court of Appeals, which written order shall be granted only upon a written application of the Department of Justice filed before the authorizing division of the Court of Appeals and only upon a showing that the Department of Justice has been duly authorized in writing by the Anti-Terrorism Council to file the application with proper written notice the person whose conversation, communication, message discussion or spoken or written words have been the subject of surveillance, monitoring, recording and interception to open, reveal, divulge, and use the contents of the sealed envelope or sealed package as evidence.

Any person, law enforcement official or judicial authority who violates his duty to notify in writing the persons subject of the surveillance as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

**SEC. 14. *Application to Open Deposited Sealed Envelope or Sealed Package.*** - The written application with notice to the party concerned to open the deposited sealed envelope or sealed package shall clearly state the purpose or reason: (a) for opening the sealed envelope or sealed package; (b) for revealing or disclosing its classified contents; (c) for replaying, divulging, and or reading any of the listened to, intercepted, and recorded communications, messages, conversations, discussions, or spoken or written words (including any of the excerpts and summaries thereof and any of the notes or memoranda made in connection therewith); [ and, (d) for using any of said listened to, intercepted, and recorded communications, messages, conversations, discussions, or spoken or written words (including any of the excerpts and summaries thereof and any of the notes or memoranda made in connection therewith) as evidence.

Any person, law enforcement official or judicial authority who violates his duty to notify as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

**SEC. 15. *Evidentiary Value of Deposited Materials.*** - Any listened to, intercepted, and recorded communications, messages, conversations, discussions, or spoken or written words, or any part or parts thereof, or any information or fact contained therein, including their existence, content, substance, purport, effect, or meaning, which have been secured in violation of the pertinent provisions of this Act, shall absolutely not be admissible and usable as evidence against anybody in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing.

**SEC. 16. *Penalty for Unauthorized or Malicious Interceptions and/or Recordings.*** - Any police or law enforcement personnel who, not being authorized to do so by the authorizing division of the Court of Appeals, tracks down, taps, listens to, intercepts, and records in whatever manner or form any communication, message, conversation, discussion, or spoken or written word of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

In addition to the liability attaching to the offender for the commission of any other offense, the penalty of ten (10) years and one day to twelve (12) years of imprisonment and the accessory penalty of perpetual absolute disqualification from public office shall be imposed upon any police or law enforcement personnel who maliciously obtained an authority from the Court of Appeals to track down, tap, listen to, intercept, and record in whatever manner or form any communication, message, conversation, discussion, or spoken or written words of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism: Provided, That notwithstanding Section 13 of this Act, the party aggrieved by such authorization shall be allowed access to the sealed envelope or sealed package and the contents thereof as evidence for the prosecution of any police or law enforcement personnel who maliciously procured said authorization.

**SEC. 17. *Proscription of Terrorist Organizations, Association, or Group of Persons.*** -

Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court.

**SEC. 18. *Period of Detention Without Judicial Warrant of Arrest.*** - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law



enforcement personnel: Provided, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: Provided ,That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and judge as Provided in the preceding paragraph.

***SEC. 19. Period of Detention in the Event of an Actual or Imminent Terrorist Attack. -***

In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the

Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest. If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five days after the date of the detention of the persons concerned: *Provided, however*, That within three days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.

**SEC. 20. *Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days.*** - The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days.

**SEC. 21. *Rights of a Person under Custodial Detention.*** - The moment a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism is apprehended or arrested and detained, he shall forthwith be informed, by the arresting police or law enforcement officers or by the police or law enforcement officers to whose custody the person concerned is brought, of his or her right: (a) to be informed of the nature and cause of his arrest, to remain silent and to have competent and independent counsel preferably of his choice. If the person cannot afford the services of counsel of his or her choice, the police or law enforcement officers concerned shall immediately contact the free legal assistance unit of the Integrated Bar of the Philippines (IBP) or the Public Attorney's Office (PAO). It shall be the duty of the free legal assistance unit of the IBP or the PAO thus contacted to immediately visit the person(s) detained and provide him or her with legal assistance. These rights cannot be waived except in writing and in the presence of the counsel of choice; (b) informed of the cause or causes of his detention in the presence of his legal counsel; (c) allowed to communicate freely with his legal counsel and to confer

with them at any time without restriction; (d) allowed to communicate freely and privately without restrictions with the members of his family or with his nearest relatives and to be visited by them; and, (e) allowed freely to avail of the service of a physician or physicians of choice.

**SEC. 22. *Penalty for Violation of the Rights of a Detainee.*** - Any police or law enforcement personnel, or any personnel of the police or other law enforcement custodial unit that violates any of the aforesaid rights of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Unless the police or law enforcement personnel who violated the rights of a detainee or detainees as stated above is duly identified, the same penalty shall be imposed on the police officer or head or leader of the law enforcement unit having custody of the detainee at the time the violation was done.

**SEC. 23. *Requirement for an Official Custodial Logbook and its Contents.*** - The police or other law enforcement custodial unit in whose care and control the person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism has been placed under custodial arrest and detention shall keep a securely and orderly maintained official logbook, which is hereby declared as a public document and opened to and made available for the inspection and scrutiny of the lawyer or lawyers of the person under custody or any member of his or her family or relative by consanguinity or affinity within the fourth civil degree or his or her physician at any time of the day or night without any form of restriction. The logbook shall contain a clear and concise record of: (a) the name, description, and address of the detained person; (b) the date and exact time of his initial admission for custodial arrest and detention; (c) the name and address of the physician or physicians who examined him physically and medically; (d) the state of his health and physical condition at the time of his initial admission for custodial detention; (e) the date and time of each removal of the detained person from his cell for interrogation or

for any purpose; (f) the date and time of his return to his cell; (g) the name and address of the physician or physicians who physically and medically examined him after each interrogation; (h) a summary of the physical and medical findings on the detained person after each of such interrogation; (i) the names and addresses of his family members and nearest relatives, if any and if available; (j) the names and addresses of persons, who visit the detained person; (k) the date and time of each of such visits; (l) the date and time of each request of the detained person to communicate and confer with his legal counsel or counsels; (m) the date and time of each visit, and date and time of each departure of his legal counsel or counsels; and, (n) all other important events bearing on and all relevant details regarding the treatment of the detained person while under custodial arrest and detention.

The said police or law enforcement custodial unit shall upon demand of the aforementioned lawyer or lawyers or members of the family or relatives within the fourth civil degree of consanguinity or affinity of the person under custody or his or her physician issue a certified true copy of the entries of the logbook relative to the concerned detained person without delay or restriction or requiring any fees whatsoever including documentary stamp tax, notarial fees, and the like. This certified true copy may be attested by the person who has custody of the logbook or who allowed the party concerned to scrutinize it at the time the demand for the certified true copy is made.

The police or other law enforcement custodial unit who fails to comply with the preceding paragraph to keep an official logbook shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

**SEC. 24. *No Torture or Coercion in Investigation and Interrogation.*** - No threat, intimidation, or coercion, and no act which will inflict any form of physical pain or torment, or mental, moral, or psychological pressure, on the detained person, which shall vitiate his freewill, shall be employed in his investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism; otherwise, the evidence obtained from said detained person resulting from such threat, intimidation, or coercion, or from

such inflicted physical pain or torment, or mental, moral, or psychological pressure, shall be, in its entirety, absolutely not admissible and usable as evidence in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing.

**SEC. 25. *Penalty for Threat, Intimidation, Coercion, or Torture in the Investigation and Interrogation of a Detained Person.*** - Any person or persons who use threat, intimidation, or coercion, or who inflict physical pain or torment, or mental, moral, or psychological pressure, which shall vitiate the free-will of a charged or suspected person under investigation and interrogation for the crime of terrorism or the crime of conspiracy to commit terrorism shall be guilty of an offense and shall suffer the penalty of twelve (12) years and one day to twenty (20) years of imprisonment.

When death or serious permanent disability of said detained person occurs as a consequence of the use of such threat, intimidation, or coercion, or as a consequence of the infliction on him of such physical pain or torment, or as a consequence of the infliction on him of such mental, moral, or psychological pressure, the penalty shall be twelve (12) years and one day to twenty (20) years of imprisonment.

**SEC. 26. *Restriction on Travel.*** - In cases where evidence of guilt is not strong, and the person charged with the crime of terrorism or conspiracy to commit terrorism is entitled to bail and is granted the same, the court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he resides or where the case is pending, in the interest of national security and public safety, consistent with Article III, Section 6 of the Constitution. Travel outside of said municipality or city, without the authorization of the court, shall be deemed a violation of the terms and conditions of his bail, which shall then be forfeited as provided under the Rules of Court.

He/she may also be placed under house arrest by order of the court at his or her usual place of residence.

While under house arrest, he or she may not use telephones, cellphones, e-mails, computers, the internet or other means of communications with people outside the residence until otherwise ordered by the court.

The restrictions abovementioned shall be terminated upon the acquittal of the accused or of the dismissal of the case filed against him or earlier upon the discretion of the court on motion of the prosecutor or of the accused.

**SEC. 27. *Judicial Authorization Required to Examine Bank Deposits, Accounts, and Records.*** - The provisions of Republic Act No. 1405 as amended, to the contrary notwithstanding, the justices of the Court of Appeals designated as a special court to handle anti-terrorism cases after satisfying themselves of the existence of probable cause in a hearing called for that purpose that: (1) a person charged with or suspected of the crime of terrorism or, conspiracy to commit terrorism, (2) of a judicially declared and outlawed terrorist organization, association, or group of persons; and (3) of a member of such judicially declared and outlawed organization, association, or group of persons, may authorize in writing any police or law enforcement officer and the members of his/her team duly authorized in writing by the anti-terrorism council to: (a) examine, or cause the examination of, the deposits, placements, trust accounts, assets and records in a bank or financial institution; and (b) gather or cause the gathering of any relevant information about such deposits, placements, trust accounts, assets, and records from a bank or financial institution. The bank or financial institution concerned, shall not refuse to allow such examination or to provide the desired information, when so, ordered by and served with the written order of the Court of Appeals.

**SEC. 28. *Application to Examine Bank Deposits, Accounts, and Records.*** - The written order of the Court of Appeals authorizing the examination of bank deposits, placements, trust accounts, assets, and records: (1) of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) of any judicially declared and outlawed terrorist organization, association, or group of persons, or (3) of any member of such organization, association, or group of persons in a bank or financial institution, and the

gathering of any relevant information about the same from said bank or financial institution, shall only be granted by the authorizing division of the Court of Appeals upon an ex parte application to that effect of a police or of a law enforcement official who has been duly authorized in writing to file such ex parte application by the Anti-Terrorism Council created in Section 53 of this Act to file such ex parte application, and upon examination under oath or affirmation of the applicant and, the witnesses he may produce to establish the facts that will justify the need and urgency of examining and freezing the bank deposits, placements, trust accounts, assets, and records: (1) of the person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) of a judicially declared and outlawed terrorist organization, association or group of persons; or (3) of any member of such organization, association, or group of persons.

**SEC. 29. Classification and Contents of the Court Order Authorizing the Examination of Bank Deposits, Accounts, and Records.** - The written order granted by the authorizing division of the Court of Appeals as well as its order, if any, to extend or renew the same, the original ex parte application of the applicant, including his ex parte application to extend or renew, if any, and the written authorizations of the Anti-Terrorism Council, shall be deemed and are hereby declared as classified information: Provided, That the person whose bank deposits, placements, trust accounts, assets, and records have been examined, frozen, sequestered and seized by law enforcement authorities has the right to be informed of the acts done by the law enforcement authorities in the premises or to challenge, if he or she intends to do so, the legality of the interference. The written order of the authorizing division of the Court of Appeals designated to handle cases involving terrorism shall specify: (a) the identify of the said: (1) person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) judicially declared and outlawed terrorist organization, association, or group of persons; and (3) member of such judicially declared and outlawed organization, association, or group of persons, as the case may be. whose deposits, placements, trust accounts, assets, and records are to be examined or the information to be gathered; (b) the identity of the bank or financial Institution where such deposits, placements, trust accounts, assets, and records are held and maintained; (c) the

identity of the persons who will conduct the said examination and the gathering of the desired information; and, (d) the length of time the authorization shall be carried out.

**SEC. 30. *Effective Period of Court Authorization to Examine and Obtain Information on Bank Deposits, Accounts, and Records.*** - The authorization issued or granted by the authorizing division of the Court of Appeals to examine or cause the examination of and to freeze bank deposits, placements, trust accounts, assets, and records, or to gather information about the same, shall be effective for the length of time specified in the written order of the authorizing division of the Court of Appeals, which shall not exceed a period of thirty (30) days from the date of receipt of the written order of the authorizing division of the Court of Appeals by the applicant police or law enforcement official.

The authorizing division of the Court of Appeals may extend or renew the said authorization for another period, which shall not exceed thirty (30) days renewable to another thirty (30) days from the expiration of the original period: Provided, That the authorizing division of the Court of Appeals is satisfied that such extension or renewal is in the public interest: and, Provided, further, That the application for extension or renewal, which must be filed by the original applicant, has been duly authorized in writing by the Anti-Terrorism Council.

In case of death of the original applicant or in case he is physically disabled to file the application for extension or renewal, the one next in rank to the original applicant among the members of the team named in the original written order of the authorizing division of the Court of Appeals shall file the application for extension or renewal: Provided, That, without prejudice to the liability of the police or law enforcement personnel under Section 19 hereof, the applicant police or law enforcement official shall have thirty (30) days after the termination of the period granted by the Court of Appeals as provided in the preceding paragraphs within which to file the appropriate case before the Public Prosecutor's Office for any violation of this Act.

If no case is filed within the thirty (30)-day period, the applicant police or law enforcement official shall immediately notify in writing the person subject of the bank examination and



freezing of bank deposits, placements, trust accounts, assets and records. The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the applicant police or law enforcement official who fails to notify in writing the person subject of the bank examination and freezing of bank deposits, placements, trust accounts, assets and records.

Any person, law enforcement official or judicial authority who violates his duty to notify in writing as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

**SEC. 31. *Custody of Bank Data and Information Obtained after Examination of Deposits, Placements, Trust Accounts, Assets and Records.*** - All information, data, excerpts, summaries, notes, memoranda, working sheets, reports, and other documents obtained from the examination of the bank deposits, placements, trust accounts, assets and records of: (1) a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism; (2) a judicially declared and outlawed terrorist organization, association, or group of persons; or (3) a member of any such organization, association, or group of persons shall, within forty-eight (48) hours after the expiration of the period fixed in the written order of the authorizing division of the Court of Appeals or within forty-eight (48) hours after the expiration of the extension or renewal granted by the authorizing division of the Court of Appeals, be deposited with the authorizing division of the Court of Appeals in a sealed envelope or sealed package, as the case may be, and shall be accompanied by a joint affidavit of the applicant police or law enforcement official and the persons who actually conducted the examination of said bank deposits, placements, trust accounts, assets and records.

**SEC. 32. *Contents of Joint Affidavit.*** - The joint affidavit shall state: (a) the identifying marks, numbers, or symbols of the deposits, placements, trust accounts, assets, and records examined; (b) the identity and address of the bank or financial institution where such deposits, placements, trust accounts, assets, and records are held and maintained; (c) the number of bank deposits, placements, trust accounts, assets, and records discovered,

examined, and frozen; (d) the outstanding balances of each of such deposits, placements, trust accounts, assets; (e) all information, data, excerpts, summaries, notes, memoranda, working sheets, reports, documents, records examined and placed in the sealed envelope or sealed package deposited with the authorizing division of the Court of Appeals; (f) the date of the original written authorization granted by the Anti-Terrorism Council to the applicant to file the ex parte Application to conduct the examination of the said bank deposits, placements, trust accounts, assets and records, as well as the date of any extension or renewal of the original written authorization granted by the authorizing division of the Court of Appeals; and (g) that the items Enumerated were all that were found in the bank or financial institution examined at the time of the completion of the examination.

The joint affidavit shall also certify under oath that no duplicates or copies of the information, data, excerpts, summaries, notes, memoranda, working sheets, reports, and documents acquired from the examination of the bank deposits, placements, trust accounts, assets and records have been made, or, if made, that all such duplicates and copies are placed in the sealed envelope or sealed package deposited with the authorizing division of the Court of Appeals.

It shall be unlawful for any person, police officer or custodian of the bank data and information obtained after examination of deposits, placements, trust accounts, assets and records to copy, to remove, delete, expunge, incinerate, shred or destroy in any manner the items enumerated above in whole or in part under any pretext whatsoever,

Any person who copies, removes, deletes, expunges, incinerates, shreds or destroys the items enumerated above shall suffer a penalty of not less than six years and one day to twelve (12) years of imprisonment.

**SEC. 33. *Disposition of Bank Materials.*** - The sealed envelope or sealed package and the contents thereof, which are deposited with the authorizing division of the Court of Appeals, shall be deemed and are hereby declared classified information and the sealed envelope or sealed package shall not be opened and its contents shall not be divulged, revealed, read, or used as evidence unless authorized in a written order of the authorizing division of the

Court of Appeals, which written order shall be granted only upon a written application of the Department of Justice filed before the authorizing division of the Court of Appeals and only upon a showing that the Department of Justice has been duly authorized in writing by the Anti-Terrorism Council to file the application, with notice in writing to the party concerned not later than three days before the scheduled opening, to open, reveal, divulge, and use the contents of the sealed envelope or sealed package as evidence.

Any person, law enforcement official or judicial authority who violates his duty to notify in writing as defined above shall suffer the penalty of six years and one day to eight years of imprisonment.

**SEC. 34. *Application to Open Deposited Bank Materials.*** - The written application, with notice in writing to the party concerned not later than three days of the scheduled opening, to open the sealed envelope or sealed package shall clearly state the purpose and reason: (a) for opening the sealed envelope or sealed package; (b) for revealing and disclosing its classified contents; and, (c) for using the classified information, data, excerpts, summaries, notes, memoranda, working sheets, reports, and documents as evidence.

**SEC. 35. *Evidentiary Value of Deposited Bank Materials.*** - Any information, data, excerpts, summaries, notes, memoranda, work sheets, reports, or documents acquired from the examination of the bank deposits, placements, trust accounts, assets and records of: (1) a person charged or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism; (2) a judicially declared and outlawed terrorist organization, association, or group of persons; or (3) a member of such organization, association, or group of persons, which have been secured in violation of the provisions of this Act, shall absolutely not be admissible and usable as evidence against anybody in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing.

**SEC. 36. *Penalty for Unauthorized or Malicious Examination of a Bank or a Financial Institution.*** - Any person, police or law enforcement personnel who examines the deposits, placements, trust accounts, assets, or records in a bank or financial institution of: (1) a person charged with or suspected of the crime of terrorism or the crime of conspiracy to

commit terrorism; (2) a judicially declared and outlawed terrorist organization, association, or group of persons; or (3) a member of such organization, association, or group of persons, without being authorized to do so by the Court of Appeals, shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

In addition to the liability attaching to the offender for the commission of any other offense, the penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel, who maliciously obtained an authority from the Court of Appeals to examine the deposits, placements, trust accounts, assets, or records in a bank or financial institution of: (1) a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) a judicially declared and outlawed terrorist organization, association, or group of persons; or (3) a member of such organization, association, or group of persons: Provided, That notwithstanding Section 33 of this Act, the party aggrieved by such authorization shall upon motion duly filed be allowed access to the sealed envelope or sealed package and the contents thereof as evidence for the prosecution of any police or law enforcement personnel who maliciously procured said authorization.

**SEC. 37. *Penalty of Bank Officials and Employees Defying a Court Authorization.*** - An employee, official, or a member of the board of directors of a bank or financial institution, who refuses to allow the examination of the deposits, placements, trust accounts, assets, and records of: (1) a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism; (2) a judicially declared and outlawed organization, association, or group of persons; or (3) a member of such judicially declared and outlawed organization, association, or group of persons in said bank or financial institution, when duly served with the written order of the authorizing division of the Court of Appeals, shall be guilty of an offense and shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

**SEC. 38. *Penalty for False or Untruthful Statement or Misrepresentation of Material Fact in Joint Affidavits.*** - Any false or untruthful statement or misrepresentation of

material fact in the joint affidavits required respectively in Section 12 and Section 32 of this Act shall constitute a criminal offense and the affiants shall suffer individually the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

**SEC. 39. *Seizure and Sequestration.*** - The deposits and their outstanding balances, placements, trust accounts, assets, and records in any bank or financial institution, moneys, businesses, transportation and communication equipment, supplies and other implements, and property of whatever kind and nature belonging: (1) to any person suspected of or charged before a competent Regional Trial Court for the crime of terrorism or the crime of conspiracy to commit terrorism; (2) to a judicially declared and outlawed organization, association, or group of persons; or (3) to a member of such organization, association, or group of persons shall be seized, sequestered, and frozen in order to prevent their use, transfer, or conveyance for purposes that are inimical to the safety and security of the people or injurious to the interest of the State.

The accused or a person suspected of may withdraw such sums as may be reasonably needed by the monthly needs of his family including the services of his or her counsel and his or her family's medical needs upon approval of the court. He or she may also use any of his property that is under seizure or sequestration or frozen because of his/her indictment as a terrorist upon permission of the court for any legitimate reason.

Any person who unjustifiably refuses to follow the order of the proper division of the Court of Appeals to allow the person accused of the crime of terrorism or of the crime of conspiracy to commit terrorism to withdraw such sums from sequestered or frozen deposits, placements, trust accounts, assets and records as may be necessary for the regular sustenance of his/her family or to use any of his/her property that has been seized, sequestered or frozen for legitimate purposes while his/her case is pending shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

**SEC. 40. *Nature of Seized. Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Records.*** - The seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records belonging to a person suspected of or

charged with the crime of terrorism or conspiracy to commit terrorism shall be deemed as property held in trust by the bank or financial institution for such person and the government during the pendency of the investigation of the person suspected of or during the pendency of the trial of the person charged with any of the said crimes, as the case may be and their use or disposition while the case is pending shall be subject to the approval of the court before which the case or cases are pending.

**SEC. 41. *Disposition of the Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Record.*** - If the person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism is found, after his investigation, to be innocent by the investigating body, or is acquitted, after his arraignment or his case is dismissed before his arraignment by a competent court, the seizure, sequestration and freezing of his bank deposits, placements, trust accounts, assets and records shall forthwith be deemed lifted by the investigating body or by the competent court, as the case may be, and his bank deposits, placements, trust accounts, assets and records shall be deemed released from such seizure, sequestration and freezing, and shall be restored to him without any delay by the bank or financial institution concerned without any further action on his part. The filing of any appeal on motion for reconsideration shall not state the release of said funds from seizure, sequestration and freezing.

If the person charged with the crime of terrorism or conspiracy to commit terrorism is convicted by a final judgment of a competent trial court, his seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records shall be automatically forfeited in favor of the government.

Upon his or her acquittal or the dismissal of the charges against him or her, the amount of Five hundred thousand pesos (P500.000.00) a day for the period in which his properties, assets or funds were seized shall be paid to him on the concept of liquidated damages. The amount shall be taken from the appropriations of the police or law enforcement agency that caused the filing of the enumerated charges against him/her.

**SEC. 42. *Penalty for Unjustified Refusal to Restore or Delay in Restoring Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Records.*** - Any person who unjustifiably refuses to restore or delays the restoration of seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records of a person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism after such suspected person has been found innocent by the investigating body or after the case against such charged person has been dismissed or after he is acquitted by a competent court shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

**SEC. 43. *Penalty for the Loss, Misuse, Diversion or Dissipation of Seized, Sequestered and Frozen Bank Deposits, Placements, Trust Accounts, Assets and Records.*** - Any person who is responsible for the loss, misuse, diversion, or dissipation of the whole or any part of the seized, sequestered and frozen bank deposits, placements, trust accounts, assets and records of a person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

**SEC. 44. *Infidelity in the Custody of Detained Persons.*** - Any public officer who has direct custody of a detained person or under the provisions of this Act and who by his deliberate act, misconduct, or inexcusable negligence causes or allows the escape of such detained person shall be guilty of an offense and shall suffer the penalty of: (a) twelve (12) years and one day to twenty (20) years of imprisonment, if the detained person has already been convicted and sentenced in a final judgment of a competent court; and (b) six years and one day to twelve (12) years of imprisonment, if the detained person has not been convicted and sentenced in a final judgment of a competent court.

**SEC. 45. *Immunity and Protection of Government Witnesses.*** - The provisions of Republic Act No. 6981 (Witness Protection, Security and Benefits Act) to the contrary notwithstanding, the immunity of government witnesses testifying under this Act shall be governed by Sections 17 and 18 of Rule 119 of the Rules of Court: Provided, however,

That said witnesses shall be entitled to benefits granted to witnesses under said Republic Act No.6981.

**SEC. 46. *Penalty for Unauthorized Revelation of Classified Materials.*** - The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any person, police or law enforcement agent, judicial officer or civil servant who, not being authorized by the Court of Appeals to do so, reveals in any manner or form any classified information under this Act.

**SEC. 47. *Penalty for Furnishing False Evidence, Forged Document, or Spurious Evidence.*** - The penalty of twelve (12) years and one day to twenty (20) years of imprisonment shall be imposed upon any person who knowingly furnishes false testimony, forged document or spurious evidence in any investigation or hearing under this Act.

**SEC. 48. *Continuous Trial.*** - In cases of terrorism or conspiracy to commit terrorism, the judge shall set the continuous trial on a daily basis from Monday to Friday or other short-term trial calendar so as to ensure speedy trial.

**SEC. 49. *Prosecution Under This Act Shall be a Bar to Another Prosecution under the Revised Penal Code or any Special Penal Laws.*** - When a person has been prosecuted under a provision of this Act, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for any offense or felony which is necessarily included in the offense charged under this Act.

**SEC. 50. *Damages for Unproven Charge of Terrorism.*** - Upon acquittal, any person who is accused of terrorism shall be entitled to the payment of damages in the amount of Five hundred thousand pesos (P500,000.00) for every day that he or she has been detained or deprived of liberty or arrested without a warrant as a result of such an accusation. The amount of damages shall be automatically charged against the appropriations of the police agency or the Anti-Terrorism Council that brought or sanctioned the filing of the charges



against the accused. It shall also be released within fifteen (15) days from the date of the acquittal of the accused. The award of damages mentioned above shall be without prejudice to the right of the acquitted accused to file criminal or administrative charges against those responsible for charging him with the case of terrorism.

Any officer, employee, personnel, or person who delays the release or refuses to release the amounts awarded to the individual acquitted of the crime of terrorism as directed in the paragraph immediately preceding shall suffer the penalty of six months of imprisonment.

If the deductions are less than the amounts due to the detained persons, the amount needed to complete the compensation shall be taken from the current appropriations for intelligence, emergency, social or other funds of the Office of the President.

In the event that the amount cannot be covered by the current budget of the police or law enforcement agency concerned, the amount shall be automatically included in the appropriations of the said agency for the coming year.

**SEC. 51. *Duty to Record and Report the Name and Address of the Informant.*** - The police or law enforcement officers to whom the name or a suspect in the crime of terrorism was first revealed shall record the real name and the specific address of the informant.

The police or law enforcement officials concerned shall report the informant's name and address to their superior officer who shall transmit the information to the Congressional Oversight Committee or to the proper court within five days after the suspect was placed under arrest or his properties were sequestered, seized or frozen.

The name and address of the informant shall be considered confidential and shall not be unnecessarily revealed until after the proceedings against the suspect shall have been terminated.

**SEC. 52. *Applicability of the Revised Penal Code.*** - The provisions of Book I of the Revised Penal Code shall be applicable to this Act.

**SEC. 53. *Anti-Terrorism Council.*** - An Anti-Terrorism Council, hereinafter referred to, for brevity, as the "Council," is hereby created. The members of the Council are: (1) the Executive Secretary, who shall be its Chairperson; (2) the Secretary of Justice, who shall be its Vice Chairperson; and (3) the Secretary of Foreign Affairs; (4) the Secretary of National Defense; (5) the Secretary of the Interior and Local Government; (6) the Secretary of Finance; and (7) the National Security Advisor, as its other members.

The Council shall implement this Act and assume the responsibility for the proper and effective implementation of the anti-terrorism policy of the country. The Council shall keep records of its proceedings and decisions. All records of the Council shall be subject to such security classifications as the Council may, in its judgment and discretion, decide to adopt to safeguard the safety of the people, the security of the Republic, and the welfare of the nation.

The National Intelligence Coordinating Agency shall be the Secretariat of the Council. The Council shall define the powers, duties, and functions of the National Intelligence Coordinating Agency as Secretariat of the Council. The National Bureau of Investigation, the Bureau of Immigration, the Office of Civil Defense, the Intelligence Service of the Armed Forces of the Philippines, the Anti-Money Laundering Council, the Philippine Center on Transnational Crime, and the Philippine National Police intelligence and investigative elements shall serve as support agencies for the Council.

The Council shall formulate and adopt comprehensive, adequate, efficient, and effective anti-terrorism plans, programs, and counter-measures to suppress and eradicate terrorism in the country and to protect the people from acts of terrorism. Nothing herein shall be interpreted to empower the Anti-Terrorism Council to exercise any judicial or quasi-judicial power or authority.

**SEC. 54. *Functions of the Council.*** - In pursuit of its mandate in the previous Section, the Council shall have the following functions with due regard for the rights of the people as mandated by the Constitution and pertinent laws:

1. Formulate and adopt plans, programs and counter-measures against terrorists and acts of terrorism in the country;
2. Coordinate all national efforts to suppress and eradicate acts of terrorism in the country and mobilize the entire nation against terrorism prescribed in this Act;
3. Direct the speedy investigation and prosecution of all persons accused or detained for the crime of terrorism or conspiracy to commit terrorism and other offenses punishable under this Act, and monitor the progress of their cases;
4. Establish and maintain comprehensive data-base information system on terrorism, terrorist activities, and counter-terrorism operations;
5. Freeze the funds property, bank deposits, placements, trust accounts, assets and records belonging to a person suspected of or charged with the crime of terrorism or conspiracy to commit terrorism, pursuant to Republic Act No. 9160, otherwise known as the Anti-Money Laundering Act of 2001, as amended;
6. Grant monetary rewards and other incentives to informers who give vital information leading to the apprehension, arrest, detention, prosecution, and conviction of person or persons who are liable for the crime of terrorism or conspiracy to commit terrorism;
7. Establish and maintain coordination with and the cooperation and assistance of other nations in the struggle against international terrorism; and
8. Request the Supreme Court to designate specific divisions of the Court of Appeals and Regional Trial Courts in Manila, Cebu City and Cagayan de Oro City, as the case may be, to handle all cases involving the crime of terrorism or conspiracy to commit terrorism and all matters incident to said crimes. The Secretary of Justice shall assign a team of prosecutors from: (a) Luzon to handle terrorism cases filed in the Regional Trial Court in Manila; (b) from the Visayas to handle cases filed in Cebu City; and (c) from Mindanao to handle cases filed in Cagayan de Oro City.

**SEC. 55. *Role of the Commission on Human Rights.*** - The Commission on Human Rights shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act; and for this purpose, the Commission shall have the concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, or detained for the crime of terrorism or conspiracy to commit terrorism.

**SEC. 56. *Creation of a Grievance Committee.*** - There is hereby created a Grievance Committee composed of the Ombudsman, as chair, and the Solicitor General, and an undersecretary from the Department of Justice (DOJ), as members, to receive and evaluate

complaints against the actuations of the police and law enforcement officials in the implementation of this Act. The Committee shall hold office in Manila. The Committee shall have three subcommittees that will be respectively headed by the Deputy Ombudsmen in Luzon, the Visayas and Mindanao. The subcommittees shall respectively hold office at the Offices of Deputy Ombudsman. Three Assistant Solicitors General designated by the Solicitor General, and the regional prosecutors of the DOJ assigned to the regions where the Deputy Ombudsmen hold office shall be members thereof. The three subcommittees shall assist the Grievance Committee in receiving, investigating and evaluating complaints against the police and other law enforcement officers in the implementation of this Act. If the evidence warrants it, they may file the appropriate cases against the erring police and law enforcement officers. Unless seasonably disowned or denounced by the complainants, decisions or judgments in the said cases shall preclude the filing of other cases based on the same cause or causes of action as those that were filed with the Grievance Committee or its branches.

**SEC. 57. *Ban on Extraordinary Rendition.*** - No person suspected or convicted of the crime of terrorism shall be subjected to extraordinary rendition to any country unless his or her testimony is needed for terrorist related police investigations or judicial trials in the said country and unless his or her human rights, including the right against torture, and right to counsel, are officially assured by the requesting country and transmitted accordingly and approved by the Department of Justice.

**SEC. 58. *Extra-Territorial Application of this Act.*** - Subject to the provision of an existing treaty of which the Philippines is a signatory and to any contrary provision of any law of preferential application, the provisions of this Act shall apply: (1) to individual persons who commit any of the crimes defined and punished in this Act within the terrestrial domain, interior waters, maritime zone, and airspace of the Philippines; (2) to individual persons who, although physically outside the territorial limits of the Philippines, commit, conspire or plot to commit any of the crimes defined and punished in this Act inside the territorial limits of the Philippines; (3) to individual persons who, although physically outside the territorial limits of the Philippines, commit any of the said crimes on board

Philippine ship or Philippine airship; (4) to individual persons who commit any of said crimes within any embassy, consulate, or diplomatic premises belonging to or occupied by the Philippine government in an official capacity; (5) to individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes against Philippine citizens or persons of Philippines descent, where their citizenship or ethnicity was a factor in the commission of the crime; and (6) to individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes directly against the Philippine government.

**SEC. 59. *Joint Oversight Committee.*** - There is hereby created a Joint Oversight Committee to oversee the implementation of this Act. The Oversight Committee shall be composed of five members each from the Senate and the House in addition to the Chairs of the Committees of Public Order of both Houses who shall also Chair the Oversight Committee in the order specified herein. The membership of the Committee for every House shall at least have two opposition or minority members. The Joint Oversight Committee shall have its own independent counsel. The Chair of the Committee shall rotate every six months with the Senate chairing it for the first six months and the House for the next six months. In every case, the ranking opposition or minority member of the Committee shall be the Vice Chair. Upon the expiration of one year after this Act is approved by the President, the Committee shall review the Act particularly the provision that authorize the surveillance of suspects of or persons charged with the crime of terrorism. To that end, the Committee shall summon the police and law enforcement officers and the members of the Anti-Terrorism Council and require them to answer questions from the members of Congress and to submit a written report of the acts they have done in the implementation of the law including the manner in which the persons suspected of or charged with the crime of terrorism have been dealt with in their custody and from the date when the movements of the latter were subjected to surveillance and his or her correspondences, messages, conversations and the like were listened to or subjected to monitoring, recording and tapping. Without prejudice to its submitting other reports, the Committee shall render a semiannual report to both Houses of Congress. The report may include where necessary a recommendation to reassess the effects of globalization on

terrorist activities on the people, provide a sunset clause to or amend any portion of the Act or to repeal the Act in its entirety. The courts dealing with anti-terrorism cases shall submit to Congress and the President a report every six months of the status of anti-terrorism cases that have been filed with them starting from the date this Act is implemented.

**SEC. 60. *Separability Clause.*** - If for any reason any part or provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall remain and continue to be in full force and effect.

**SEC. 61. *Repealing Clause.*** - All laws, decrees, executive orders, rules or regulations or parts thereof, inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

**SEC. 62. *Special Effectivity Clause.*** - After the bill shall have been signed into law by the President, the Act shall be published in three newspapers of national circulation; three newspapers of local circulation, one each in Ilocos Norte, Baguio City and Pampanga; three newspapers of local circulation, one each in Cebu, Iloilo and Tacloban; and three newspapers of local circulation, one each in Cagayan de Oro, Davao and General Santos city.

The title of the Act and its provisions defining the acts of terrorism that are punished shall be aired everyday at primetime for seven days, morning, noon and night over three national television and radio networks; three radio and television networks, one each in Cebu, Tacloban and Iloilo; and in five radio and television networks, one each in Lanao del Sur, Cagayan de Oro, Davao City, Cotabato City and Zamboanga City. The publication in the newspapers of local circulation and the announcements over local radio and television networks shall be done in the dominant language of the community. After the publication required above shall have been done, the Act shall take effect two months after the elections are held in May 2007. Thereafter, the provisions of this Act shall be automatically suspended one month before and two months as after the holding of any election.

Approved,

**JOSE DE VENECIA JR.**  
Speaker of the House of  
Representatives

**MANNY VILLAR**  
President of the Senate

This Act which is a consolidation of Senate Bill No. 2137 and House Bill No. 4839 was finally passed by the Senate and the House of Representatives on February 8, 2007 and February 19, 2007, respectively.

**ROBERTO P. NAZARENO**  
Secretary General House of  
Representatives

**OSCAR G. YABES**  
Secretary of Senate

Approved: MARCH 06, 2007

**GLORIA MACAPAGAL-ARROYO**  
*President of the Philippines*

## **ANNEX II**

### **THE REVISED RULES OF CRIMINAL PROCEDURE**

(RULES 110 - 127, RULES OF COURT)

[Effective December 1, 2000]

### **RULE 115 - RIGHTS OF ACCUSED**

**Section 1. *Rights of accused at trial.*** – In all criminal prosecutions, the accused shall be entitled to the following rights:

- (a) To be presumed innocent until the contrary is proved beyond reasonable doubt.
- (b) To be informed of the nature and cause of the accusation against him.
- (c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his

bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.

- (d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.
- (e) To be exempt from being compelled to be a witness against himself.
- (f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.
- (g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.
- (h) To have speedy, impartial and public trial.

To appeal in all cases allowed and in the manner prescribed by law.